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Supreme Court, U.S.

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No.

**In the Supreme Court
OF THE
United States**

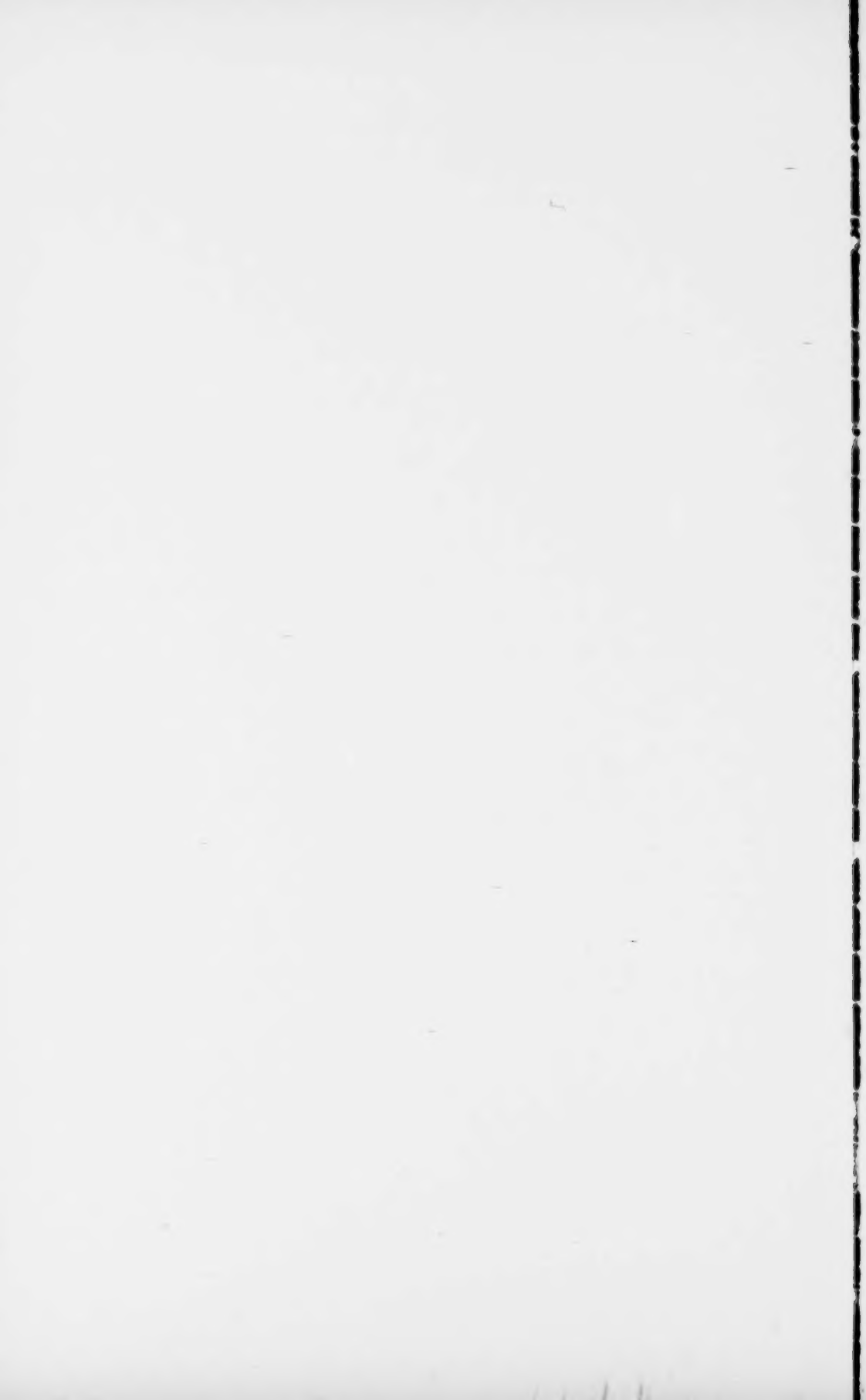
OCTOBER TERM, 1989

SHIRLEY LOFTIS,
Petitioner,
vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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LIST OF PARTIES TO THE PROCEEDING

Petitioner is Shirley Loftis, who was the Plaintiff in the District Court proceeding.

Respondents are the Los Angeles Unified School District and seven individuals, Harry Handler, John J. Lingel, Ira Gilbert, Clayton Lilley, Milton Neuschwander, Sidney C. Hoskins and Kirk Van Sooy, who were defendants in the District Court proceeding.

QUESTIONS PRESENTED

1. Where the Appellate Court affirmed that the Plaintiff established a prima facie case of race and sex discrimination through disparate impact analysis, and where the Appellate Court further determined that there had been no rebuttal using established precedents of this Court, may the Appellate Court nevertheless deny the Plaintiff a ruling in her favor by engaging in factfinding and speculating what facts the District court might have found if the District Court had used the proper legal standards?

2. Having established a prima facie case of race and sex discrimination by disparate impact and treatment, may the employer justify its decision not to promote the plaintiff based upon a comparison between the Plaintiff and a hypothetical perfect or ideal candidate?

3. Having established a prima facie case of race and sex discrimination by disparate impact and treatment, may the employer justify its decision not to promote the Plaintiff based upon subjective evidence that arose after Plaintiff's denial of a promotion?

4. Did the District establish legitimate employer goals to justify only considering references/recommendations obtained within the last 10 years, thus disregarding Plaintiff's employment record of over 30 years in the District?

5. Does Title IX of the Education Amendments of 1972 also prohibit employment discrimination?

6. Are the individual defendants liable for their intentional discrimination against Plaintiff and did Defendant Handler's failure to act against the conspiracy deprive Plaintiff of her civil rights?

7. Was it erroneous for the District Court to require Plaintiff to prove physical or monetary harm in order to claim damages for violation of her civil rights?

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SHIRLEY LOFTIS,
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Respondents.

**Petition for Writ of Certiorari to
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for the Ninth Circuit**

OPINIONS BELOW

On September 19, 1986, the United States District Court for the Central District of California (Magistrate Kronenberg) filed its Memorandum of Opinion; Findings of Fact and Conclusions of Law following a non-jury trial. Appendix A. On September 23, 1986, judgment was entered in favor of all defendants. App. B. On June 20, 1989, the Court of Appeals filed its opinion affirming the judgment. App. C. On July 28, 1989, the Court of Appeals filed its order denying the Petition for Rehearing. App. D.

JURISDICTION

Federal jurisdiction in the trial court was evoked under 28 U.S.C. 1331 and the doctrine of pendent jurisdiction. The

decision of the Court of Appeals sought to be reviewed was entered on June 20, 1989. App. C.

A timely Petition for Rehearing was filed on July 5, 1989, and the Petition was denied on July 28, 1989. App. D. Jurisdiction in this Court is evoked under 28 U.S.C. 1254(1). This Petition is timely under 28 U.S.C. 2101(c).

PERTINENT STATUTES

Petitioner's claims arise under Title VII of the Civil Rights Act of 1964, as amended, as well as other statutes guaranteeing civil rights in the context of public employment.

42 U.S.C. 2000e-2(a) provides:

"It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

In addition, Plaintiff's claims arise under Title VII, section 2000e-3(a), the Fourteenth Amendment of the United States Constitution; the Civil Rights Act of 1866, 42 U.S.C. 1981; the Civil Rights Act of 1871, 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C. 1986; the Age Discrimination in Employment Act, 29 U.S.C. 623, 631; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681; and California law prohibiting discrimination, California Government Code

sections 12900, 12940 and 12941. Pursuant to Rule 21.1(f) of the Supreme Court of the United States, the pertinent text of these laws and regulations is set forth in Appendix E.

STATEMENT OF THE CASE

A. Nature of the Case.

Shirley Loftis, a white female born in 1928 and employed by the Los Angeles Unified School District ("District") since 1958, falls into that tragic category of white females employed by the District who both before and after Title VII have been discriminated against with respect to their employment opportunities to become school administrators. Loftis brought this action against the District and various administrators charging employment discrimination on the basis of race, sex and age.

Following a 21-day bifurcated non-jury trial taken under submission on November 20, 1984, Magistrate Kronenberg, on September 19, 1986, ruled in favor of all defendants after having also ruled that Loftis established a prima facie case of both disparate impact and disparate treatment. The Ninth Circuit affirmed, despite concluding that the trial court "used an incorrect legal standard in reaching its result" and that "existing social factors" do not provide a basis for overcoming a prima facie case. (App. C-8)

B. Material Facts.

The District is the nation's second largest school district. The District exclusively promotes its administrators from its teaching staff. (App. A-5) It has always used a subjective promotion system that is unsystematic, without any written standards for any of its five pass/fail barriers, and employs two different promotion routes to administrative positions (approximately 25 percent are promoted by "direct appointment" without even the necessity of an application, and the

remainder are promoted through the subjective "promotion cycle" route.) Prior to 1972, before Title VII of the Civil Rights Act of 1964, as amended, became applicable to the District, its administrative corps was primarily composed of white males. In 1972, white males held 53 percent of the administrative positions, but provided only 25 percent of the teachers. A white male was 4.5 times as likely as a white female to be an administrator.

By 1980, the District had reversed its employment practices and was primarily promoting minorities to administrative positions. This is pursuant to an informal, loosely-tailored affirmative action program that discriminates against white females. White females have been and continue to be left out of the process, both before and after Title VII, despite the fact that white females provide 52.3 percent of the elementary teachers. The District's recent practice of promoting minorities is also based upon the discriminatory and unlawful premise that the District's administrative work force should mirror its student population in violation of *Wygant v. Jackson Board of Education*, 476 U.S. 265, 276, 106 S.Ct. 1842, 1848 (1986) and ultimately *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954).

Statistical evidence demonstrated how the District's (elementary and secondary schools) promotions to the administrator corps are related to the increase in the percentage of minority students. Non-white student composition has increased from 43.4 percent in 1966 to 53.6 percent in 1972, and to 76.2 percent in 1980. Non-white certificated (teachers/administrators) composition has changed from 19.4 percent in 1966 to 23.5 percent in 1972, 34.8 percent in 1980, and to 37.7 percent in 1983. As white male administrators retired, they were replaced by non-white candidates even though the white female candidates as a group had greater tenure. In 1972, non-white males were 4.9 times more likely to serve as an administrator than a white female. The ratio

was 4.1 in 1980, and 4.0 in 1983. The ratio for black females compared to white females was 1.4 in 1972, 2.2 in 1980, and 1.9 in 1983.

In 1980, at the elementary level the composition statistics show that black males were 10.6 times as likely to be assistant principals as white females. Likewise, white males were 5.7 times as likely, "male others" (Hispanic, Asian) were 10.1 times as likely, black females were 2.5 times as likely, and "females other" were 1.7 times as likely as white females to be assistant principals. In 1980, none of the eight region superintendents of the District was a white female despite the fact that they provided 52.3 percent of the elementary teachers. Only one of the 16 deputy region superintendents was a white female.

The subjective recruitment-training barrier, the *first step* in the promotion process for either route, caused disparate impact against white females and females during the period of 1972-1979. For example, in the 1972 promotion cycle to assistant principal, elementary, only one out of every 274 white female teachers applied for promotion while one out of every eight black males applied and one out of every 18 white males applied. In the 1974 promotion cycle, the ratios were 182, 5 and 18. In the 1976 promotion cycle, the ratios were 102, 4 and 14. In the 1977 promotion cycle, the ratios were 70, 5 and 14. In the 1979 promotion cycle, one out of every 51 white female teachers applied, one out of every seven black male teachers applied and one out of every 20 white male teachers applied.

In the "recruitment-training component", teachers acquire promotional experience which allows them to progress in the selection process. What constitutes "promotional experience" is undefined, unidentified, unweighted and subjective. The District Court found that there are no objective criteria or written standards. (App. A-7) The promotion announcements and application for Assistant Principal, El-

ementary, do not identify or require any mandatory specific promotional experience.

The District Court also found that a school principal, or some other administrator such as a region superintendent, has "sole discretion" to select a teacher with or without an administrative credential or academic qualifications and provide or withhold "promotional experience" in the "recruitment-training component." (App. A-6)

There is also no systematic procedure or requirement for giving notice of promotional experience openings. Teachers who pass the "recruitment-training component," pass-fail barrier proceed in either the "promotion cycle route" or the "direct appointment route." Candidates that proceed through the "promotion cycle route" must pass four subjective barriers: recruitment-training, Training and Experience ("T & E") Committee, personal interview committee and rule-of-five.

There are no written standards or guidelines used by the T & E Committee to evaluate the applicants. The T & E Committee is orally instructed to consider the recency of promotional experience of the applicant, giving greater weight to recent promotional experience, and also to apply a ten-year limitation or cut-off. The District Court found that the ten-year rule:

"has the result of making less valuable the experience of older persons acquired early in their careers. The dating of experience is also an indication of the probable age of the applicant." (App. A-7)

The District Court found that sex, race and age of an applicant can be determined by the T & E Committee members from the application and references. (App. A-7)

The District Court also found that:

"the rating system had many weaknesses growing out of vague standards and words whose subjective mean-

ings may differ between raters. It was largely implemented and controlled by one individual whose qualifications are ambiguous at best. It was subjective and lacked sufficient controls or norms. Although no rating system may be completely objective, some are more so than others." (App. A-25)

The subjective "direct appointment" barrier caused disparate impact against white females and females for promotion to assistant principal, elementary, during the period 1972-1980. For example, in 1975-76, black male elementary teachers were selected at a rate that was 43.8 times that for white female elementary teachers, and black female teachers were selected at a rate that was 3.2 times that for white females. The 1978-79 time period showed similar results. During the period 1972-1980, males received 61 percent of the "direct appointments" to principal, elementary, and 44 percent of the "direct appointments" to assistant principal, elementary, when males provided approximately 14 percent of the labor pool.

Loftis is a highly-qualified individual who but for the discriminatory practices of the District should have been promoted to assistant principal in 1964, but who has never been promoted because of the District's discriminatory practices.

Loftis earned her B.A. Degree in 1949 from the University of Hawaii. She served as an administrator with the State Department in Tokyo, Japan, from 1949-1953. Loftis embarked on her teaching career in 1956. From 1956-1958, she was a fourth grade teacher at the Cape Canaveral, Florida, Federal elementary school. In 1958, Loftis commenced her employment with the District.

In 1961, she earned her M.S. Degree from the University of Southern California with a straight "A" average, plus awards, and membership in the national honorary fraternity, Pi Lambda Theta. She was awarded her administrative

credential (kindergarten - 14th grade) qualifying her to hold all District administrative positions, including superintendent, and completed a total of 79 graduate semester units in school administration.

Loftis received exclusively "outstanding" performance evaluations (20 written evaluations during the period 1958-1984) from a wide variety of administrators. In 1962, Loftis was assigned to a training and demonstration school that provided training for college seniors entering education. The training and demonstration school was located in San Pedro, California, a 25-mile drive (one way) from her South Gate, California, school and from her Huntington Park home. Loftis' South Gate school was located only two miles from the Watts Towers, Watts, an inner-most city area, but the District did not deem a Watts transfer a promotional opportunity assignment.

In 1964, and after eight consecutive years of teaching, Loftis advised the training and demonstration school principal, Mr. Miller, that she wanted to apply for the 1964 promotion cycle to assistant principal, elementary. Mr. Miller informed Loftis for the first time that he believed "women should be older than men" before they became administrators and that he would not provide her with the necessary recommendation.

In 1966, Loftis applied for promotion to assistant principal. Mr. Miller's recommendation stated:

"Mrs. Loftis has the highest potential to become a successful administrator of any person I have had contact with within the last five years. . . . I would have no reservation in placing Mrs. Loftis in a Vice-Principal position without an examination!"

Loftis successfully passed the 1966 promotion cycle requirements, but she was not offered an assistant principalship. Uncontradicted evidence was introduced at trial that predominantly black candidates attended the 1966 meeting

of selected candidates. At that time, blacks comprised 13.3 percent of the elementary teachers and whites 80.6 percent.

In 1966, Loftis and the principal at 118th Street School, an inner-city school in Watts, requested that the District transfer Loftis as a teacher to a vacancy at the 118th Street School. The deputy region superintendent, Mr. Ira Gilbert, using his unlimited discretion, refused their requests. Gilbert served in the same capacity over Loftis during 1965-84. In 1966, Loftis entered the newly-established administrator development program and successfully completed it in 1968. Gilbert's recommendation in 1966, which was a prerequisite to her participation in the program, stated:

"Mrs. Loftis is an outstanding teacher. She has served in two schools as a training teacher and is recognized as a leader in both. She is an intelligent, warm person and has much to offer in this position. Mrs. Loftis would be an excellent vice-principal."

Loftis served as a traveling teacher from 1969-1970, in inner-city schools, spending one or two days a week in the classrooms at different schools advising and guiding inexperienced teachers and classroom teachers with gifted students.

In 1974 and 1976, Loftis submitted timely, formal, written requests for promotional assignments. Deputy region superintendent, Gilbert, disregarded her 1974 request and in 1976, assigned Loftis to Dominguez Elementary School as a teacher.

In seeking promotions, Loftis taught in 17 different District schools located in seven cities/areas (South Gate, San Pedro, Los Angeles, Watts, Gardena, Harbor City, and Carson). During this time she applied for ten administrative positions.

After Loftis filed her EEOC complaint in January, 1980, she became the sole intervenor in a class action suit for sex

discrimination in promotions against the District (CV80-3348, *Szewiola v. LAUSD*), *opted out of the settlement in April, 1981, along with other females, and filed this action in September, 1981.*

The issue of Loftis' subjective qualifications issue did not arise until 1981, after Loftis had filed her EEOC complaint a year earlier, and while she was serving as the sole intervenor in the class action suit. The subjective qualification issue was initiated by Defendant and Region Superintendent Lingel. A new principal, Mrs. Zikas, who, in November, 1980, was suddenly transferred in over Loftis at Dominguez School from a different region. Loftis had no previous contact with Zikas, but Zikas was promoted by Lingel and recruited to the new region by Lingel.

In 1981, Lingel for the first time sought the opinion of another teacher, Mr. Selznick, about Loftis' administrative potential. Selznick, a third grade teacher at Dominguez School, was one of the two teachers' union representatives for the school. Loftis was not a union member. Selznick testified, in responding to Lingel's request:

"... in my opinion I didn't feel she (Loftis) was *best* qualified. She (Loftis) might be an *outstanding* teacher but that doesn't make her an *outstanding* administrator." "... (that Loftis was) *extremely polite*." "... (that he) did not want to see Mrs. Carlock (the other union representative for the school) *demoted* (from the position as substitute principal), (for Selznick thought it would be) *unfair*." (Emp. added.)

Loftis successfully served as the Dominguez School testing coordinator for three and one-half years during 1980-1983, and as the school's substitute principal for eighteen months from January, 1981 to June, 1982. Loftis was nominated and seconded for the faculty ombudsmen position of faculty representative in September, 1984, but she declined

the position since she knew that an October, 1984, trial was forthcoming.

Lingel, in both his 1979 and December, 1981, written promotion reference recommendations rated Loftis in the top possible overall bracket for prediction of her success as an assistant principal, and made no negative comments regarding her abilities or qualifications. (App. F-1-4, Ex. 1, 2)

The new principal, Mrs. Zikas, also rated Loftis qualified and satisfactory without any negative comments in her 1981 and 1983 written evaluations. The only other evaluations that Loftis received for her assignment at Dominguez School were the 1979 and 1981 written promotion recommendations from Mr. Sidney Hoskins, the Dominguez School principal over Loftis from October, 1976 to February, 1979. (App. F-7-25, Ex. 36, 42) Both of these references for promotion to assistant principal were in the top bracket with the highest possible rating for prediction of success, and contained only complimentary comments.

Loftis also established a prima facie case of disparate treatment with respect to her applications for 10 different administrative positions between 1964-80. None of the District's witnesses at the trial had any personal knowledge as to the actual reasons why Loftis was rejected for the 10 positions. None of the testimony pertained to the 576 teachers that were promoted from 1972-80 to entry-level administrators (elementary) being better qualified than Loftis at the time of selection and promotion. Their testimony was based upon a *comparison between Loftis and the "perfect" or "ideal" administrative applicant, not any actual applicant who was, in point of fact, selected.* In other words, Loftis was always compared at trial against "a perfect 10" when, in point of fact, no such person was ever produced at trial. It would be impossible for over 576 new administrators to all be "perfect 10's."

The District Court also found that promotional experience is totally controlled by the subjective decisions of other administrators. (App. A-6) The District Court found that a *prima facie* case of intentional discrimination had been established against Defendants Lingel and the District. (App. A-30) One error in the District Court's decision was its conclusion that Loftis had failed to prove by "direct factual evidence" Lingel's "intentional discrimination *alone* and that without it, she would have been advanced." (App. A-21, 31; Emp. added.)

One example of Lingel's intentional acts was his submission of a harmful reference regarding Loftis on December 2, 1981. The reference was substantially lower than Lingel's 1979 reference. The 1981 reference was submitted shortly after Lingel had been served as a defendant in September, 1981. This adverse reference is only adverse to the extent that not in every category did Loftis receive the highest rating of "Endorsed with Enthusiasm." In three of seven categories Loftis received the second highest rating, "Endorsed with Confidence." Finally, the overall rating entitled "OVERALL PREDICTION FOR SUCCESS" was again the highest possible rating, "Endorsed with Enthusiasm." (App. F-1-2, Ex. 1)

All of the other Defendant administrators had a direct part in the "recruitment-training component" and in the "promotion cycle route." The District Court found that former Principal Neuschwander wrote on an evaluation reference:

"that he had not had the opportunity to observe [certain of Loftis' qualifications]." (App. A-12)

The District Court found that Neuschwander refused to change his remarks despite Loftis' request that he do so, and the District court found that:

"This would have an adverse affect (sic) on plaintiff's chances for promotion." (App. A-12)

The District Court found similar intentional behavior on the part of former Principals Hoskins and Van Sooy, but again excused their conduct on the mistaken belief that this *alone* did not keep Plaintiff from advancing. The District Court dismissed Defendant Handler on the basis that:

"He [Handler] was not directly involved in the promotional process at the time." (App. A-10)

However, Handler was directly involved. (App. F-5-6, Ex. 24) When Loftis went to Handler seeking assistance regarding her failure to obtain a promotion, the District Court found that Handler indicated:

"Considering her training and experience, he could not understand why she had not gotten ahead." (App. A-10)

He suggested that:

"If she were interested in promotion perhaps she should consider leaving the district." (App. A-10)

Not only does Handler's opinion confirm that Loftis qualified based upon her training and experience, but it also shows Handler's deliberate indifference to the discriminatory treatment suffered by Loftis. Clearly, Handler knew what was going on. Instead of solving the problem, he contributed to it by suggesting that she leave the District. The conduct of Handler, as well as the conduct of the lower ranking District administrators, and the blatant statistical imbalance against white females, demonstrate that it was the District's standard operating procedure, its custom and policy, to discriminate against white females in violation of Title VII of the 1964 Civil Rights Act, as amended, and 42 U.S.C. 1981, 1983, 1985 and 1986.

REASONS FOR GRANTING THE PETITION

This case raises fundamental questions as to how a public employer, the nation's second largest school district, can

circumvent this Court's holdings under Title VII of the Civil Rights Act of 1964, as amended, and the Fourteenth Amendment of the United States Constitution through the District's implementation of informal affirmative action programs. Statistical evidence establishes that the Los Angeles Unified School District grants a preference to non-white candidates for promotion to administrative positions. The effect of this informal affirmative action program is to promote unlawfully black males at a rate that ranged from 7 to 43 times the rate for white females.

In a subjective promotion system can the employer justify its decision based upon qualifications that were not required of all successful applicants? To allow an employer to do this after-the-fact permits the employer to selectively pick and chose which qualifications count and which qualifications do not count. In effect, the employer is permitted to manufacture a artificial rationale for not having promoted Loftis. If *post hoc* rationalization is permitted then the employer is immunized from liability.

This case raises fundamental questions as to whether the Court of Appeals may retry a civil rights employment case after the plaintiff has established a case of both disparate impact and disparate treatment. The Court of Appeals erred when it permitted the employer to compare the plaintiff to a hypothetical perfect or ideal candidate. An employer will always be able to rebut a *prima facie* case if it is allowed to compare the 'plaintiff to a hypothetical candidate. Rather, the employer must be required to produce evidence regarding the actual candidates who were promoted, not some hypothetical candidate. This is especially true when the employer's ratings of the plaintiff found her to be in the highest ranking with respect to overall prediction of success.

The District also violated Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act with its 10-year limitation on promotional

experience and the placing of new but not justified promotional requirements on long-time candidates.

This Petition should also be granted because those school administrators who directly participated in the employment decisions not to promote the plaintiff have escaped from liability based upon the mistaken notion that their actions *alone* must have prevented the plaintiff from being promoted. Individual Defendants must also be liable when they intentionally withheld promotional opportunities and when they have unlimited discretion in how much weight is given experience.

I.

THE NINTH CIRCUIT COURT OF APPEALS' VIEW THAT A DE NOVO STANDARD MAY BE APPLIED IN REVIEWING FINDINGS OF FACT GOVERNING THE REBUTTAL OF A PRIMA FACIE CASE OF DISPARATE IMPACT IS IN DIRECT CONFLICT WITH THE REPORTED DECISIONS OF THE SUPREME COURT INCLUDING *WARDS COVE PACKING CO., INC. V. ATONIO*, 490 U.S. —, 109 S.CT. 2115 (1989)

- A. The Appellate Court cannot engage in factfinding to overcome the District's failure to rebut the prima facie case.

In *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 106 S.Ct. 1527 (1986), the Ninth Circuit had engaged in factfinding, notwithstanding the fact that the District Court had not found the necessary facts regarding whether or not "maritime work" was "incidental and occasional, taking but a small portion of the work time." Then Justice Rehnquist delivered the opinion of the Court and concluded as follows:

"If the Court of Appeals believed that the District Court had failed to make findings of fact essential to a proper resolution of the legal question, it should have remanded to the District Court to make those findings.

If it was of the view that the findings of the District Court were 'clearly erroneous' within the meaning of Rule 52(a), it could have set them aside on that basis. If it believed that the District Court's factual findings were unassailable, but that the proper rule of law was misapplied to those findings, it could have reversed the District Court's judgment. But it should not simply have made factual findings on its own." (*Id.* at 714; 106 S.Ct. at 1530.)

When the Court of Appeals in *Loftis* found that the proper rule of law was misapplied by the District Court to the findings, its obligation was to reverse the District Court's judgment. It should not simply have made factual findings on its own, where it engaged in speculating what the District Court might have done if the District Court had followed the proper legal standards. (App. C-5-9, Part III C.)

The Court of Appeals found that the District Court had held that *prima facie* cases of disparate impact in promotions had been established against two groups, the District's *females* (App. C-5) and *white females* (App. C-7). The Court of Appeals also correctly found that in order to rebut the *prima facie* cases, the District must show statistically that no disparate impact upon the two groups existed, or alternatively, that the offending barrier or practice was job related or a business necessity, and cited three Supreme Court decisions for this premise. (App. C-5)

The Court of Appeals' Opinion at Part C.1. regarding disparate impact, (App. C-5-9), compels the conclusion that *Loftis* is entitled to prevail.

"In sum, the school district's statistical evidence failed to refute *Loftis*' *prima facie* case of disparate impact because it left untouched two aspects of that case. The school district's statistical evidence (as described by the district court) did not address the

complete promotion process. Nor did it address the subgroup of white females as opposed to whites or females, although the district court found that Loftis had made out a prima facie case of discrimination against white females." (App. C-7)

The Court of Appeals also correctly held that:

"The district court used an incorrect legal standard in reaching its result. A prima facie case of disparate impact is not rebutted by showing that no lesser qualified applicants were promoted. The practice must be shown to be job related. (See *Albermarle*, 422 U.S. at 425.) Nor do 'existing social factors' provide a basis for overcoming a prima facie case. The district court cites no authority for this proposition, nor do the appellees attempt to defend it." (App. C-8)

The error in the Appellate Court's Opinion, where factual findings or substitution of judgment on behalf of the District Court were made, is that it:

"...interpret(s) these statements of the district court to be a finding of business necessity for the school district's failure to promote Loftis through the direct appointment process." (App. C-8)

Implicit in the Court of Appeals' Opinion is that Loftis could not prevail in the disparate impact case unless she also prevailed in the disparate treatment case, a theory that has been repeatedly and consistently rejected. The Court of Appeals gave *no citations* in support of its theory and its substitution of judgment. It is a serious error for the Court of Appeals to permit the employer to rebut Loftis' prima facie case based a comparison between Loftis and a hypothetical ideal or perfect candidate. This after the fact comparison permits the employer to immunize itself from Title VII liability. (App. C-8)

In *Watson v. Fort Worth Bank and Trust*, 487 U.S. —, 108 S.Ct. 2777 (1988), the Supreme Court recognized that different legal standards apply to Title VII disparate impact analysis and disparate treatment analysis, and that a plaintiff is entitled to use either or both approaches. In *Watson*, the Supreme Court ruled that the individual plaintiff Watson could pursue her disparate impact claim even though she was unsuccessful in her disparate treatment claim.

B. Having established a prima facie case against a multiple-component promotion system, the Court of Appeals cannot engage in factfinding to rebut the legal deficiencies in the multiple-component promotion system.

In this case, the Court of Appeals' Opinion also substituted its judgment on another matter pertaining to the rebuttal requirement in a multiple component promotion system. *Connecticut v. Teal*, 457 U.S. 441, 450, 102 S.Ct. 2525, 2532 (1982) and *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. —, 109 S.Ct. 2115, 2124 (1989), require that every proven offending barrier or requirement in a multiple component promotion system be addressed by the employer in its rebuttal. In this case, the Court of Appeals erroneously concluded, in direct contradiction to *Teal* and *Wards Cove*, that only one barrier, the direct appointment barrier, need be considered. (App. C-8) The other four barriers in the five barrier system, and the total promotion system, were not considered by the Court of Appeals, despite Loftis having established a prima facie case against these barriers. By 1984, the District through its own Report and comments by then Superintendent Handler acknowledged,

"stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates and do not provide equal access to all candidates." (App. F-26, Ex. 50); see also (App. F-30-37, Ex. 432) *"Report of a Study of Certificated Promotional Policies and*

Procedures", Los Angeles Unified School District, March, 1984.)

'One of the four barriers that was overlooked in the required rebuttal was the recruitment-training barrier, the *first* and most important *step* in the promotion process, where statistical evidence demonstrated that substantial, continued "chilling" of white females occurred for the five promotion cycles between 1972-1979, as demonstrated by the application flow rate differences. *Griffin v. Carlin*, 755 F.2d 1516, 1526 (CA11 1985) states:

"... the court erred as a matter of law because it excluded the *first step* of the promotion process, that of getting on the supervisory register... When promotions to supervisory positions are made almost exclusively from the internal work force and when the primary qualification for promotion is *experience* in the craft work force, the appropriate comparison is to this *work force* rather than to those on the supervisory register *who have already been screened*..." (Emp. added.)

The District Court recognized the importance of the recruitment-training barrier when it found:

"Since any applicant's access to administrative *experience* increases the chance of promotion and is within the *sole discretion* of school principals and other supervisors, applicants are dependent upon the latter's good will and fair dealing." (Emp. added.) (App. A-6)

Approximately 25 percent of all the 1972-80 teachers promoted to assistant principal and principal progressed through the direct appointment barrier and were exempt from the training and experience committee barrier. In *Griggs v. Duke Power Co.*, 40 U.S. 424, 431-432, 91 S.Ct. 849 (1971), it was held that the business necessity for an offending barrier or requirement could not be established by an employer when current employees performed satisfactorily without meeting the requirement.

II.

AFTER-THE-FACT RATIONALE MUST NOT BE UTILIZED BY THE EMPLOYER TO DEFEAT A PRIMA FACIE CASE OF INTENTIONAL DISCRIMINATION.

The disparate treatment analysis by the District Court and Court of Appeals was fatally flawed since it relied on adhominem, subjective and speculative belief that arose in 1981, a year after Loftis filed her January, 1980, EEOC Complaint. The courts erred when they failed to follow the requirements of *Texas Department of Com. Affairs v. Burdine*, 450 U.S. 248, 258, 101 S.Ct. 1089, 1096 (1981) and *Price Waterhouse v. Hopkins*, 490 U.S. ___, 109 S.Ct. 1775, 1785 (1989).

Burdine requires that a "clear and reasonably specific" reason be produced by the employer in the face of a prima facie case (450 U.S. at 258, 101 S.Ct. at 1096.) *Hopkins* requires that the critical inquiry is whether race or sex "was a factor in the employment decision *at the moment it was made.*" (490 U.S. at ___, 109 S. Ct. at 1785, Emp. in original.)

Loftis established prima facie cases for ten different administrative positions between 1964-80. None of the witnesses at the trial had any personal knowledge as to the actual reasons Loftis was rejected for the ten positions when the selections between candidates were made. The witnesses at the trial could only speculate, after-the-fact, as to the reason. Even the results of the promotion cycle route, the training and experience committee barrier, were merely a number, and failed to be a "clear and reasonably specific" reason as required by *Burdine*.

The findings that other candidates for administrative positions were "better qualified" are not supported by the evidence, but are based on speculation. (App. A-33) Other candidates' qualifications at the time of selection were not

listed, compared, nor the actual reason for selection known or produced. *From 1972-80, the District promoted over 576 teachers to the position of entry-level elementary administrators. No testimony was offered to the effect that all the successful applicants were equally or better qualified than Loftis at the time of selection or promotion.* The comparison between Loftis and the ideal or perfect applicant instead of real applicants will always permit the employer to immunize itself from liability.

Access to promotional experience was totally controlled by the District in the recruitment training component, as was found by the District Court. (App. A-6) The District did not even attempt to prove "equal access" to promotional experience. There was no validation of the recruitment-training barrier or any other offending barrier. The District Court merely speculated that if Loftis had additional teaching experience, such as Title I experience, she might have benefited.

Loftis proved her human relations abilities by actually successfully serving in quasi-administrative positions at Dominguez School, in addition to her 20 outstanding 1958-84 written performance evaluations that commended her in her relations with others. Loftis served as the Dominguez School's testing coordinator for three and a half years, 1980-83, as the substitute principal for a year and a half, from January, 1981 to June, 1982, and was nominated for the faculty ombudsman position, the faculty representative, in September 1984, but declined because of the upcoming October, 1984 trial. Principal Zikas' 1981 and 1983 written evaluations of Loftis were positive, and did not mention "human relations." See *Stallworth v. Shuler*, 777 F.2d 1431, 1434 (CA11 1985), where actual performance dispelled the speculation regarding white faculty acceptance of a black principal.

III.

REGENCY OF EXPERIENCE CANNOT BE APPLIED AFTER-THE-FACT TO DISQUALIFY AN OTHERWISE QUALIFIED CANDIDATE FOR A SCHOOL ADMINISTRATIVE POSITION.

Loftis is entitled to prevail in her claim for age discrimination since she proved that there were two different practices that harmed her individually (disparate treatment) as well as harmed older persons in general (disparate impact), and there was no proof of business necessity or legitimate employment goals for either practice by the District. (29 U.S.C. 623(a); 631(a).)

The two harmful practices are both in the promotion cycle route. First, candidates are intentionally limited in their applications to listing only their last ten years of promotional experience. (App. A-7,25,32) Earlier experience receives no credit. The second offending practice is the requirement that candidates submit a completely new application each time they wish to be considered, including entirely new references/recommendations from their past supervisors who may have retired or are deceased which was the case with Loftis' supervisors. The District Court and Court of Appeals failed to make any ruling on the second practice. (App. A-7,25,32; App. III-10)

The ten-year limitation policy is discriminatory *on its face* for members of the protected group, persons 40 to 70 years of age, including Loftis, since older persons are purposely prevented from having an equal footing. *Geller v. Markham*, 635 F.2d 1027 (CA2 1980).

This Court, in *Griggs v. Duke Power Company*, 401 U.S. 424, 431-432, 91 S.Ct. 849 (1971), ruled that business necessity could not be established for any requirement or practice where persons without the requirement performed satisfactorily. (See also the EEOC Uniform Guidelines at 29 C.F.R., 1607.5(F), (H), and 1607.11; (App. E-15-16)

Administrators that performed satisfactorily without meeting the ten-year limitation rule include the 25 percent of the promotees to assistant principal and principal between 1972-80 that progressed through the direct appointment barrier, as well as many of the administrators at the trial, including the Defendants, who testified that they had no classroom teaching experience within the last ten years.

Petitioner Loftis established a *prima facie* case of willful disparate treatment based on age under the four-step procedure of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). (See also, *Cuddy v. Carmen*, 762 F.2d 119 (D.C. CA 1985).) The District's admitted policy of the ten-year limitation rule is *direct evidence* of willful, purposeful, age discrimination in the promotion cycle route. (29 U.S.C. 623, 631.)

There was no evidence that rebutted the *prima facie* case. None of the District's witnesses had any voting power or personal knowledge of the reasons actually used at the time of Loftis' rejection by the T & E Committee procedure. Mere speculation is not sufficient or relevant. Candidates under 40 years of age were selected for assistant principal in all five of the 1972-79 promotion cycles. *Texas Dept. of Community Affairs v. Burdine, supra*, requires a ruling in the Plaintiff's favor when a *prima facie* case is met with "silence" (at 254) or when no "clear and reasonably specific reason" (at 258) is produced.

Further, since there was *direct evidence* of age discrimination, the burden was on the District to prove that the same decision would have been reached in the absence of that factor. *Price Waterhouse v. Hopkins, supra*, 490 U.S. —, 109 S.Ct. at 1789.

IV.

**THE DISTRICT ALSO VIOLATED TITLE IX OF THE
EDUCATION AMENDMENTS OF 1972 (20 U.S.C.
1681).**

In *North Haven Board of Education v. Bell*, 456 U.S. 509, 529, 102 S.Ct. 1912, 1922-1923 (1982), the Supreme Court held "that employment discrimination comes within the prohibition of Title IX." (20 U.S.C. 1681, et seq.) For the reasons stated in Arguments I-III, Plaintiff also proved a violation of Title IX of the Education Amendments of 1972.

V.

**ALL OF THE INDIVIDUAL DEFENDANTS HAD REC-
OMMENDATION, ASSIGNMENT AND OTHER AU-
THORITY OVER THE PROMOTION PROCESS.
THEY WERE DELIBERATELY INDIFFERENT IN
THEIR ACTS OR OMISSIONS AND THEY LACK
QUALIFIED IMMUNITY.**

The District Court found that prima facie cases of intentional discrimination had been established against Defendants Lingel and the District under 42 U.S.C. 1981 and 1983, and against the District under Title VII. (App. A-30) However, Lingel testified that he had *caused* approximately 50 percent of his assistant principals and principals in Region A, to be white females at the time of the trial, approximately five years after Loftis had filed her January, 1980, EEOC Complaint. The District Court erred and found that these after-the-fact, irrelevant statistics for the one Region (which is not a separate legal entity or an employer) rebutted the prima facie cases against Lingel and the entire District. The statistical evidence for the total District, eight Regions, contrasted sharply with Lingel's testimony. Further, the District Court disregarded *Connecticut v. Teal*, *supra*, at 455, 102 S.Ct. at 2534, that:

"A racially balanced work force cannot immunize an employer from liability for specific acts of discrimination."

With the exception of Respondent Handler the District Court found that each of the individual respondents had recommendation, assignment, and other authority in the promotion system. The District Court and Court of Appeals found that these administrators, including the respondents, possessed the promotion system authority and *caused* the claimed resulting impact. (App. C-4; App. A-7, 13, 14)

Undisputed written evidence demonstrated that Associate Superintendent Handler, who soon thereafter became the Superintendent of the District, had direct and continuing authority and control over the entire promotion system when Loftis conferred with him in his office in June, 1975, regarding the conspiracy led by Deputy Region Superintendent Gilbert to deprive Loftis from having promotional opportunities because of her race and sex. (App. A-10, 21, 22; 42 U.S.C. 1985(3).) Handler had specific knowledge of the conspiracy, had the power to remedy, and did nothing except to advise Loftis to leave the District and forfeit her 17 years of seniority with the District in violation of 42 U.S.C. 1986. The District Court clearly erred in finding: "He [Handler] was not directly involved in the promotion process at the time." (App. A-10, 21, 22) Exhibit 24, dated July 8, 1975, was the District's official promotion announcement notice, signed and approved solely by Handler. (App. F-5-6, Ex. 24) In *Smith v. Wade*, 461 U.S. 30, 103 S.Ct. 1625, 1640 (1983) it was held that damages may be awarded under 42 U.S.C. 1983 when the defendant's act or omission "involved reckless or callous indifference."

Each of the seven individual respondents lacked qualified immunity. Under limited circumstances, governmental officials have good faith immunity, but the facts in this case clearly show that the defendants were highly educated administrators, that they knowingly acted in concert to

freeze-out Loftis from having equal employment opportunities because of her race, sex and age, and that they knew or should have known that they should not have used their authority to discriminate. For example, Lingel's harmful 1981 promotion reference (App. F-1-2, Ex. 1) was made after he was served as a Defendant. His conduct violated 42 U.S.C. 1981, 1983, 2000e-2(a) and 2000e-3(a). The administrators are not entitled to qualified immunity under *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855 (1978).

Another example of the wrongdoing by these administrators is the situation regarding the promotion cycle announcement. Although Principal Hoskins claimed that the promotion announcement had been posted, monthly photographs of the school's bulletin board demonstrated that it had never been posted. It was required to be posted for a two-month period. Further, Hoskins' handwritten note on the announcement that he personally delivered to Loftis in her classroom two weeks *after* the closing date for filing an application contained no pinholes.

VI.

DAMAGES FOR HUMILIATION, MENTAL ANGUISH AND EMBARRASSMENT ARE RECOVERABLE IN A CLAIM FOR INTENTIONAL DISCRIMINATION.

Petitioner is entitled to prevail in her claim for intentional and negligent infliction of emotional distress since she suffered intentional discrimination, a violation of her federal and state civil rights (42 U.S.C. 1983; Cal. Government Code §§ 12900, 12940, 12943.) The District Court and Court of Appeals erred in their standards, requiring a showing of sudden physical harm or monetary loss, with an "objectively verifiable manifestation." (App. A-22, 23; App. C-9) The findings were clearly erroneous and wrong as a matter of law based upon the record of Loftis' humiliation,

mental anguish and embarrassment. *Cary v. Piphus*, 435 U.S. 247, 265, 98 S.Ct. 1042, 1052 (1978).

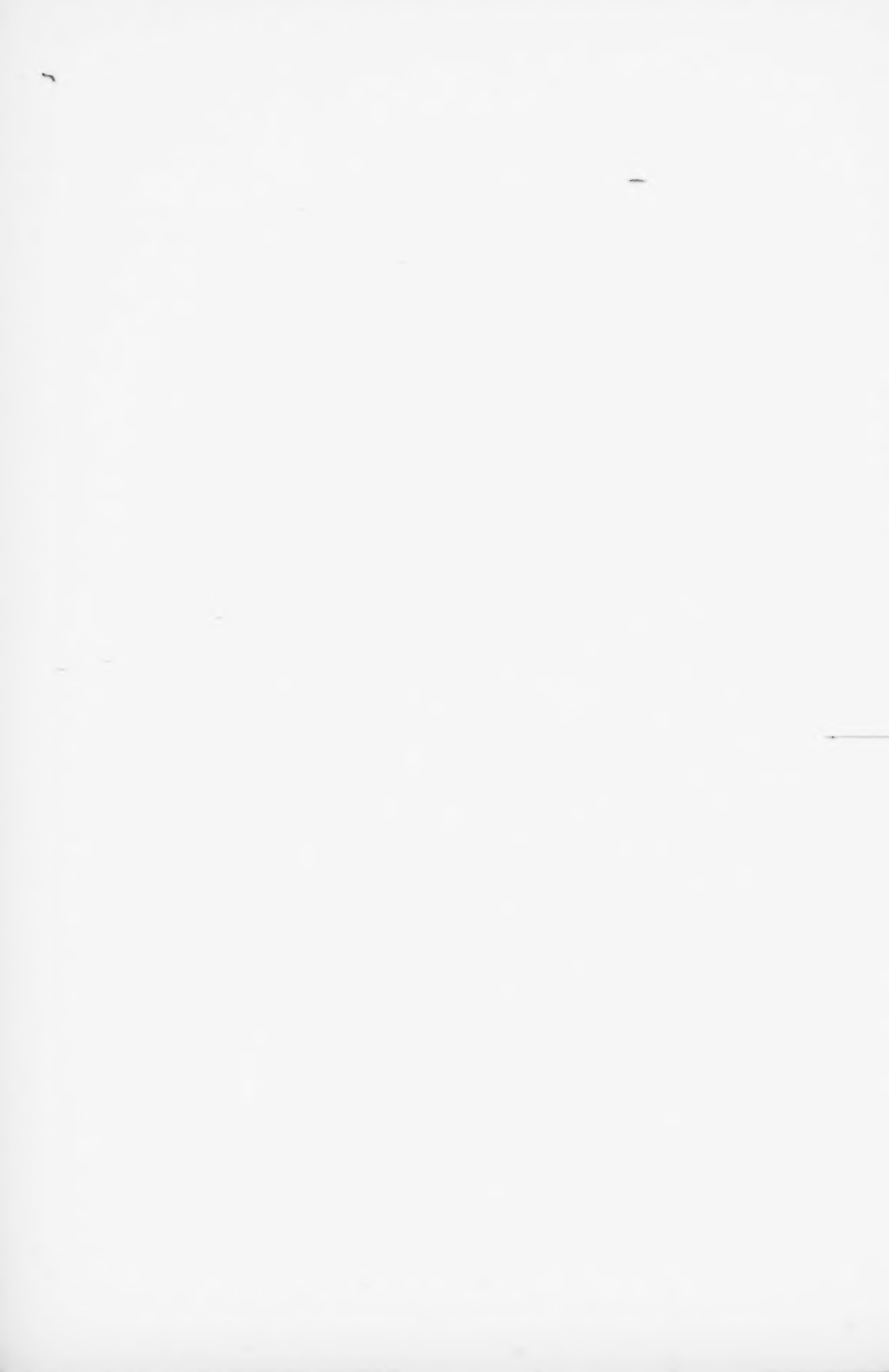
CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

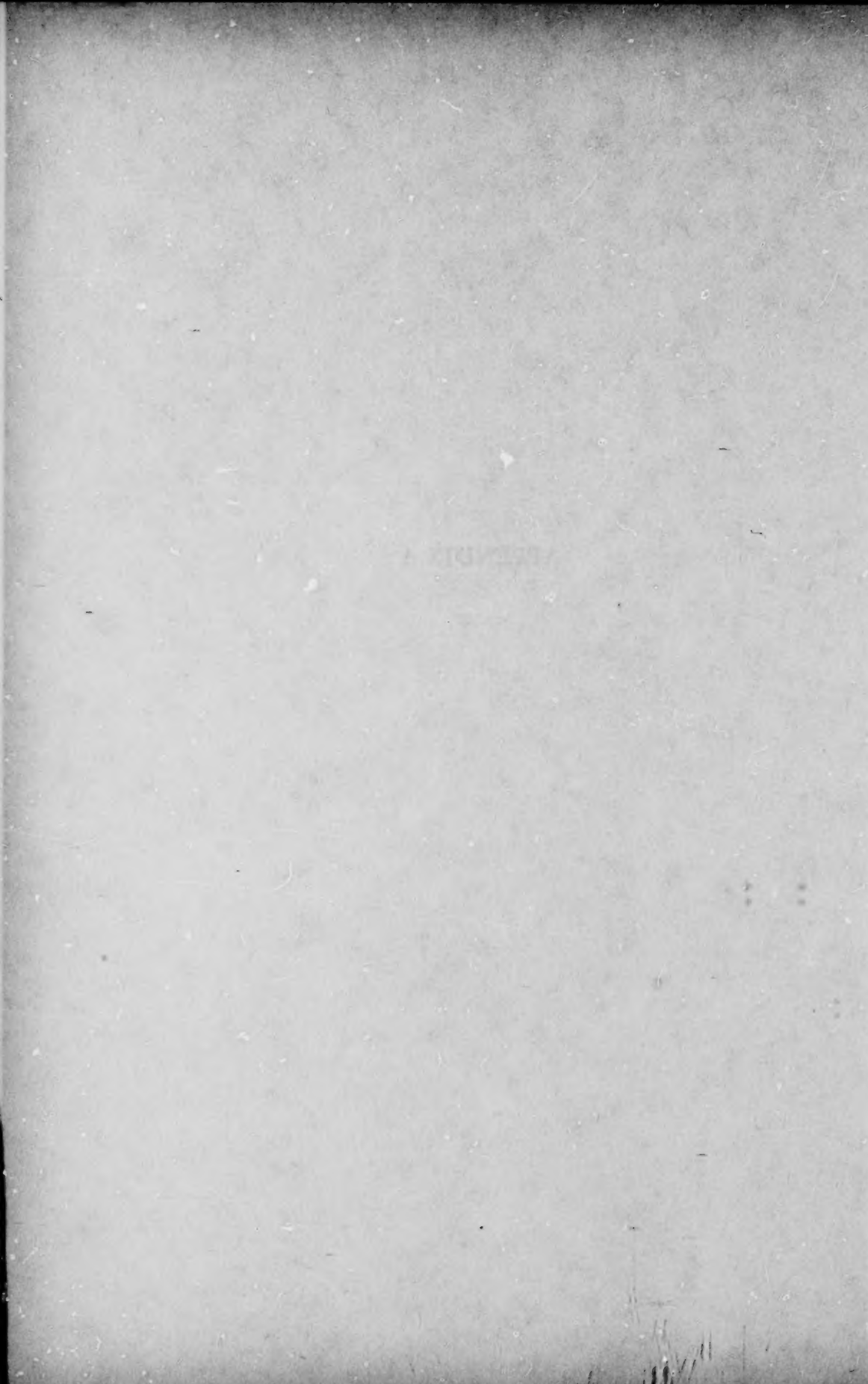
Respectfully submitted,

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APPENDIX A



No. CV 81-5071-K

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHIRLEY LOFTIS,
Plaintiff,

VS.

**LOS ANGELES UNIFIED
SCHOOL DISTRICT, et al.,**
Defendants.

**MEMORANDUM OF OPINION; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Filed September 19, 1986, Clerk, U.S. District Court,
Central District. By _____, Deputy.

The above-entitled case came on regularly for trial by the Court, sitting without a jury, before the Honorable John R. Kronenberg, United States Magistrate, as the United States District Court for all purposes in this action pursuant to the stipulation of the parties entered on September 20, 1984.¹ The trial was bifurcated and the liability phase was tried first. Testimony was taken for 19 trial days, there were two additional hearings for extended oral argument. Final argument was heard on November 20, 1984 and the question of liability was submitted.

Plaintiff was represented by Parker and Covert by Spencer E. Covert and Susan L. Straight, defendants were represented by DeWitt W. Clinton by Richard K. Mason, Principal Deputy County Counsel.

At the close of plaintiff's case on October 9, 1984, defendants moved for a dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion was granted in part by the Court which dismissed all causes of action

¹A jury was waived by all parties as to all causes of action.

against named defendants Milton Neuschwander, Sydney C. Hoskins and Kirk Van Sooy and count seven (alleging retaliation and harassment in violation of 42 U.S.C. § 2000e-3 and 29 U.S.C. § 623) as to all remaining defendants except the school district. All causes of action against defendants Handler, Gilbert and Lilley had been previously dismissed by the Court in granting partial summary judgment based upon the fifth amended complaint and the other pleadings and exhibits then on file. The defense then proceeded as to all of the remaining causes of the action against the remaining defendants, Los Angeles Unified School District and John J. Lingel.

The Court having duly considered all of the evidence, both testimonial and documentary, as well as the credibility of the witnesses, and having heard and considered the oral and written argument of counsel makes the following findings of fact and conclusions of law. Fed. R. Civ. P. 52(a):

I. PARTIES

Plaintiff Shirley Loftis is a white female citizen of the United States, 56 years of age, who is, and has at all times relevant been employed by the Los Angeles Unified School District (L.A.U.S.D.) as an elementary school teacher.

Defendant Los Angeles Unified School District is a public entity located within the jurisdiction of this Court, organized and operating under the laws of the State of California.

Defendant John Lingel has been at all times relevant an employee of the district. He is currently the Regional Superintendent for that portion of the district formerly termed Area 1 and now referred to as Region A, a post he has had since July, 1978. As such, he supervises principals of the schools in the Region.

Defendant Kirk Van Sooy is currently a retired former employee of the district. He was plaintiff's principal at Dominguez School from January 1979 through October of 1980 at which time he left on illness leave of absence. He retired from the district in January of 1981.

Defendant Milton Neuschwander is currently employed by the district as a principal. He was plaintiff's principal at Amestoy School during the 1975 school year.

Defendant Sydney C. Hoskins is currently a retired former employee of the district. He was plaintiff's principal at Dominguez School from October, 1976 through January of 1979. He retired in June of 1984.

Former defendant Harry Handler is presently the Superintendent of Schools of the district and has been at all relevant times a supervising employee of the district.

Former defendant Ira N. Gilbert is currently a retired former employee of the district. At all relevant times, up until January 1, 1984 when he retired, he was an employee of the district in an administrative capacity.

Former defendant Clayton Lilly is currently and, at all relevant times, was an employee of the district. He is currently the Supervisor of Employee Relations for the district, a position he has held since approximately 1981. Prior to that time, he was a field specialist serving the geographic region in which the plaintiff served.

Each of the named individual defendants are white males who have had the responsibility of supervising and evaluating persons of all races and both sexes.

All of the aforesaid defendants reside within the jurisdiction of this Court.

II.

BACKGROUND OF THIS ACTION

Plaintiff filed a claim with the Equal Employment Opportunity Commission ("EEOC") on January 24, 1980, alleging discrimination due to age, sex and/or race. (Exh. 382.) After a determination that there was no reasonable cause found to believe that her allegations were true she received a Notice of Right to Sue, dated June 29, 1981. The complaint in this action was filed on September 29, 1981.

Plaintiff seeks damages and injunctive relief pursuant to 20 U.S.C. § 1681, 29 U.S.C. § 623 and 42 U.S.C. §§ 1981, 1983, 1985(3), 1986, 2000e-2 and 2000e-3 as well as the fourteenth amendment to the United States Constitution. Plaintiff also alleges as pendent claims a violation of California Government Code §§ 12940 and 12941 and seeks recovery on the theory of an implied covenant of good faith and fair dealing under California law as interpreted by the state courts, alleging the intentional and negligent infliction of emotional distress.

This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the doctrine of pendent jurisdiction. Venue is properly laid in this district. 28 U.S.C. § 1391(b).

III.

INDIVIDUAL DEFENDANTS

A. FINDINGS OF FACT²

Plaintiff was first employed as an elementary school teacher by the Los Angeles Unified School District in 1958. She served continuously from 1958 until the 1964-1965

²The findings of fact are based on the exhibits, the Court's notes and tape recordings of testimony.

school year during which time she took a one year spousal leave. When plaintiff returned she continued to serve as a teacher until January of 1969 at which time she took a one year sebatical leave. She continued on an approved leave of absence through September of 1976 with the exception of a semester of service as a teacher advisor to student interns from January to June of 1970 and one year of service in the year 1974-1975 as a teacher. She has served continuously since September, 1976 as an elementary teacher at Dominguez School. All of her services has been in the Harbor area of the district, known as Area I, Area A or Region A.³ (Exh. 425.) It is one of eight regions in the school system, each with its own superintendent who reports to the superintendent of schools.

During her tenure as a school teacher, plaintiff applied for or sought promotion to Assistant Principal, Elementary, in 1966, 1968, 1977, 1979 and 1981 and "acting" assignments in 1972, 1974, 1975 and 1977. She has never been promoted by the district.

Plaintiff has B.A. and M.S. degrees as well as an administrative Credential for K-6 and K-14 grades. She applied for and was accepted in the Los Angeles Unified School District's Administrator Development Program in 1966. (Exhs. 300-303.) She has received excellent performance evaluations from her supervisors while in school and during her participation in the district's Administrative Development Programs.

Promotions within the Los Angeles Unified School District to the position of assistant principal, elementary, are always from its own certified elementary work force. The L.A.U.S.D. promotes via direct appointment and from a list developed through a cyclic competitive examination (appli-

³Region A currently has over 48,000 pupils and 2,000 teachers. (Exh. 276.)

cation) process and maintained for at least two years. Board Rule 4206 (Exh. 58). Board Rules provide for appointment from the top five names on the list. There is also a direct acting appointment system under Board Rule 4213 ("limited acting") which is supervisor initiated. One who possesses all of the qualifications is appointed by the Board of Education and acts until an eligibility list is established. (Exh. 55.) Board Rule 4214 applies to direct appointments made after an examination has produced an eligible list, but such appointments are made without regard to the "rule of five" — from the top five on the list — and are called "non-list" appointments. (Exh. 56.) Plaintiff has requested direct appointment several times but has never received it.

There is also a "sub-acting" appointment by which a person is temporarily placed in a position until a regular appointment can be made from the existing list. Such an appointment does not require possession of all the prescribed qualifications. It is designed to preserve the status quo until a permanent appointment can be made.

Since any applicant's access to administrative experience increases the change of promotion and is within the sole discretion of school principals and other supervisors, applicants are dependent upon the latter's good will and fair dealing.

There is no fail-safe mechanism to see that notice of promotional opportunities is given to all potential applicants. Notice is dependent upon posting by the various schools and departments.

Competitive applications are reviewed by the Training and Experience (T&E) Committee which reviews applications and references of those who meet the minimum qualifications, rating on a five step scale ranging from "not endorsed" to "endorsed with enthusiasm." This develops the "eligible list." Appointments are then made from the top

five. The Committee receives no written guidelines to evaluate applicants, but it is briefed. (Exh. 430.) Although an attempt is made to delete them, race, age and sex can usually be deduced from accompanying references, i.e. to schools where the racial makeup of staff is generally known as of the time of the applicants service there.

The Committee is also instructed to consider the recency of experience of a candidate with a ten year cut-off. This has the result of making less valuable the experience of older persons acquired early in their careers. The dating of this experience is also an indication of the probable age of the applicant.

The committee rating forms for evaluation of training and experience contain criteria used for evaluation in the form of a graphic rating scale, divided into five categories and ranging from the negative "not endorsed" to the positive "endorsed with enthusiasm."

This entire promotional evaluation apparatus is under the direction of Mr. Harry Nishisaka who has been Acting Supervisor of the district's Promotion Selective Office since 1978. He also acts as the sole appellate tribunal for those protesting the examination results. There is no further appeal. He received a direct acting appointment without benefit of a competitive examination. His office is in a so-called "single position" administrative class. The district, after making such an appointment, may not establish a list for years. This, in effect, creates a supervisory group who owe their appointment and, to some extent, retention, to the whim of the appointing authority.

In large measure, plaintiff's case is predicated upon the proposition that persons in administrative positions failed in their duty to assist her in qualifying herself for advancement by denying her low level supervisory positions (e.g. substitute principal, a person designated by the principal to

act in her absence) over which they had the power of appointment.⁴ Evidence is offered which, it is claimed, shows that members of minority races were given these positions even though the plaintiff was available and better qualified.

Plaintiff complains that the individual defendants in this lawsuit discriminated against her due to her sex, race and/or age and prevented her advancement. The factual evidence presented is made up of numerous incidents which, it is urged, prove that the individual defendants discriminated against plaintiff, failed to provide her with promotional opportunities and, in the case of defendants Handler, Lingel and Gilbert, failed to give her a direct appointment without an examination.

Plaintiff presents evidence that several remarks were made in her presence to prove that ambiguous acts, alleged to be discriminatory, were prompted by and directed against her sex, race or age. In 1979, when she sought a direct appointment from Dr. Lingel, she testified that he refused and told plaintiff "to be candid, there are few promotional opportunities for white persons." In 1963, her principal, Mr. Miller, is said to have told plaintiff that women seeking positions as principal "should be older than men." At an orientation meeting in the fall of 1981, Mr. Nishisaka, a minority employee, when asked how he secured his position as acting supervisor, is reported to have told the assembled group "I was annointed." In 1972 or 1973, when plaintiff was working under Mr. Frank Fitten in the district office, she testified that she heard him say that he would have promoted her but "we had to employ a minority."

In the fall of 1974, plaintiff, returning from a four-year illness leave of absence, asked former defendant Gilbert, at

⁴Such an appointment can very well lead to one as assistant or "acting" principal and to the full position itself.

that time a deputy area administrator, for a direct appointment, without examination, to principal or other similar position. Mr. Gilbert did not have the power to make such an appointment. He told plaintiff that there had been changes in the school system since she last worked there and that she now needed certain types of quasi-administrative experience offered at Title I (now Chapter I)⁵ schools in order to facilitate promotion. He offered to effectuate such a placement but told her that it would have to be out of Area I as there were no Title I appointments available locally. He also recommended that she attend workshops and special classes.

At three or four meetings held during the years 1978 to 1982, while plaintiff was teaching at Dominguez, when they discussed her professional advancement, Dr. Lingel gave plaintiff the same advice. Gilbert was instructed by Dr. Lingel to accommodate plaintiff's transfer to a Title I school should she apply. Plaintiff did not apply. She did not want to leave the area.⁶ The evidence is conclusive that Title I schools afford a significant opportunity for experience leading to administrative advancement since they provided for more staff positions and quasi-administrative assignments.

In 1974, for reasons not material to the issues before the Court, after a brief assignment at Broadacres School, plaintiff was transferred to Amestoy School for the remainder of the school year. Both were in Area I but neither were Title I

⁵Those which receive special funding from the federal government and have additional staff.

⁶Plaintiff's testimony regarding the title I transfer issue is confusing and contradictory, e.g. her deposition testimony Vol. II, P. 53, l. 4 to p. 58, l. 4; p. 93, l. 17 to p. 99, l. 15; and Vol. III, p. 103, l. 10 to p. 109, l. 13; and p. 129, ll. 8-21. The Court specifically finds that she was advised to seek transfer to a Title I school on numerous occasions and yet never made a direct request.

schools. During the 1975-76 year, plaintiff took her final one year leave of absence.

In June of 1975, plaintiff had a personal interview with Dr. Handler (at that time the assistant superintendent for instruction) briefing him with her background, her experience and her failure at promotion. He indicated that, considering her training and experience, he could not understand why she had not gotten ahead. He suggested that if she was interested in promotion perhaps she should consider leaving the district. He was not directly involved in the promotional process at the time.

After her return from leave in 1976 and prior to her assignment to Dominguez School, plaintiff sought information from former defendants Lilley and Gilbert regarding promotional opportunities at that location. She was assured that Dominguez, which was not a Title I school but which was in Area I, was a "winner" and took the assignment. However, Dominguez presented limited opportunity for assignments leading to promotion.

Plaintiff's return from leave was late and she had to secure a health clearance. This further delayed her return to work. This was in accordance with district regulations. No specific prejudice or discrimination is shown.

After plaintiff came to Dominguez School, Mr. Hoskins, her principal, kept two other persons (male and female, both white) as substitute principals and did not appoint plaintiff to that post. The two, who "knew the school," were team teacher in the sixth grade.⁷ Hoskins consulted with faculty members when considering plaintiff for other supervisory positions. He received a negative reaction but plaintiff was

⁷A "Substitute principal" is a faculty member selected by the principal to act in his or her absence. Selection is discretionary. To be effective, the person selected must be able to relate well to the rest of the faculty.

given other special assignments available at Dominguez, including the post of Assistant Principal for Administrative Detail.

In January of 1979, Mr. Hoskins was replaced as principal by defendant Van Sooy who remained at the school until October of 1980 when he left on illness leave. Van Sooy discussed promotional opportunities with plaintiff but he retained the incumbent substitute principal (a white female teacher, who had been at the school for many years), telling plaintiff that he "had a good thing going and saw no reason to change." He did give plaintiff various other opportunities helpful to her promotional advancement but did not designate her to attend workshops. Instead, Shirley Carlock, a black female who had come to Dominguez in 1976 at the request of Mr. Hoskins, was sent.

Van Sooy called plaintiff's attention to the current Administrative Development Program but she was not interested because it would require a transfer out of the area to an inner city school. This program as then constituted was a result of a *Crawford v. Board of Education*, 17 Cal.3d 280, 130 Cal. Rptr. 724 (1976). (Exh. 277.) Plaintiff, who had participated in such a program in the 1960s could benefit from it because of the enormous changes in the school system since that time. When the teacher acting as substitute principal retired in June of 1980, Mr. Van Sooy named Carlock to the position. He had observed her performance and, in his professional judgment, she was the better qualified and her promotion was in the best interest of the school. There is no evidence that her sex, race or age were in any way involved in his decision. Carlock became acting principal after Van Sooy left unexpectedly due to illness. He had recommended her for the position because she had already been successful as his substitute. She was eventually replaced by Mrs. Joyce Zikas, a white female already a school principal, who continued, through the date of trial, to be

principal at Dominguez where plaintiff remained as an elementary school teacher. Carlock reverted to substitute principal under Zikas.

At plaintiff's request, Mrs. Zikas named her as substitute principal in 1981 for the spring semester. (Exh. 166.) This appointment was renewed through the spring of 1982 during which time Zikas met with plaintiff for approximately three months on a weekly basis to discuss her concerns and to assist her in any way possible with administrative promotion. During this time there was faculty opposition. When plaintiff's term was up, Mrs. Zikas reappointed Mrs. Carlock who had the support and cooperation of the faculty.

Plaintiff alleges that, after she filed her claim of discrimination, the district, through Zikas, engaged in a program of harrassment and retaliation aimed at plaintiff. Cited are incidents of classroom observation, the taking of stenographic transcripts of conferences with the plaintiff and her students, the mention of plaintiff at faculty meetings and the solicitation of comments from plaintiff's students regarding her teaching performance.

Plaintiff had three conferences with Neuschwander concerning a 1979 promotional reference he had furnished at her request. Although she had worked with him while he was her principal during the 1961-62 school year at Victoria Avenue School, when asked his opinion of certain of her qualifications he had stated that he had not had the opportunity to observe them. This would have an adverse affect on plaintiff's chances for promotion. He refused to change his remarks even though it was pointed out to him that he had given plaintiff an outstanding recommendation in 1966 based on his observations in 1961. (Exh. 304.)

While the Board of Education is the ultimate appointing authority with respect to assistant principal and principal, elementary, Dr. Lingel as Area/Regional Superintendent

has a significant power of recommendation with regard to this Region. He also appoints his office staff.

Since his assignment to Region A in 1978, Dr. Lingel has made a significant number of recommendations and appointments. (Exh. 142.) Since 1978, of approximately 15-18 total appointments to assistant principal elementary, approximately 50% have gone to white females. Similarly, out of 25-30 appointments to principal, elementary, approximately 50% have gone to white women. There is no evidence of discrimination against white females in this appointing process.

Dr. Lingel's first significant contact with plaintiff was in 1978 after he became area superintendent. Plaintiff came to see him about her advancement. He told her that "on-site" recommendations from the people she worked with were best and not to worry about her age. At this and subsequent meetings, he indicated to her that it was not his policy to intervene in the appointment of substitute or acting principals. He has never done so. Later he was surprised to discover that she did not take his advice to transfer to a Chapter (Title) I school. She preferred to live in Area I and teach at schools nearby. He did tell her that, while there were promotional opportunities for white women, there was less chance for white males because of affirmative action.

Lingel submitted a reference for plaintiff's 1981 application for promotion despite the fact that he was under no obligation to do so. (Exh. 1.) At the time, he was aware that plaintiff had filed discrimination claims and that he was a named defendant but he felt that the total lack of a recommendation by the Regional Superintendent would be detrimental to her chances.

His evaluation was significantly less enthusiastic than the one he gave in 1979 (Exh. 2) and he knew or should have known that this would quite probably make her promotion

impossible. He lowered plaintiff's ratings because of his personal observation since 1978 and what he had been told about plaintiff's relationship with her peers by Zikas, Mrs. Kitzerow (the school office manager) and a Dominguez teacher, Zal Selznick.⁸ He concluded that the plaintiff was deficient in human relations and ability to communicate with the staff. He decided that her appointment would not be appropriate since faculty cooperation was essential.

When Zikas was transferred to Dominguez, Lingel approved the appointment. He knew of her past success as principal and that she was currently at a school that was about to be closed. He also knew that she had a 50 mile commute because of an illness in her family and would appreciate being closer to home. There is no evidence that her appointment was in any way connected with plaintiff or that it was based on age, race or sex.

Lingel allowed Carlock to remain as acting principal at Dominguez for six weeks because of a two week delay in Zikas' availability.⁹ Her retention met with almost unanimous faculty approval. (Exhs. 122, 215 and 259.)

B. DISCUSSION

Under the "continuing violation doctrine," a systematic policy of discrimination is actionable even if some or most of the events since its inception occurred prior to the running

⁸Selznick was a union representative at the time and was aware of the fact that plaintiff was not a member. There is no evidence this colored his judgment. Nor is there any evidence that he, Zikas or Kitzerow were motivated by plaintiff's race, age, sex or her participation in any protected activity. They were concerned that plaintiff could not gain the cooperation of the majority of the faculty and staff.

⁹Anything in excess of three weeks required school board approval. Carlock "acted" for six weeks without it. This was an extended "sub-acting" appointment. It was justified as an emergency measure under the circumstances.

of the statute of limitations. Therefore, a challenge to continuing systematic discrimination is timely if brought by a present employee. *Williams v. Owens-illinois, Inc.*, 665 F.2d 918 (9th Cir. 1982). For this reason and because the court has reached the merits of the matter, no further discussion of the running of the statute of limitations will be necessary.

42 U.S.C. § 1981 guarantees equal rights under the law in all of the states and territories. 42 U.S.C. § 1983 prohibits the deprivation of any right, privilege or immunity guaranteed by the Constitution and laws of the United States under color of state law or by a state agency. 42 U.S.C. § 1985(3) prohibits a conspiracy to deny persons equal protection of the laws or equal privileges and immunities under the law. 42 U.S.C. § 2000e-2 prohibits discrimination in employment practices based on race, color, religion, sex or national origin. Section 2000e-3 prohibits discrimination because one has engaged in valid labor practices. 20 U.S.C. § 1681 prohibits sexual discrimination in educational programs receiving federal financial assistance. 29 U.S.C. § 623 prohibits an employer from discriminating because of an individual's age or because of participation in investigations or litigation involving employment. California Government Code § 12940 prohibits discrimination by an employer solely because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex. California Government Code § 12941 prohibits an employer from discriminating on the basis of age alone.

California law implies in all employment contracts a covenant of good faith and fair dealing. This applies against employers only and not against their individual employees. *Cleary v. American Airlines*, 111 Cal.App.3d 443, 168 Cal. Rptr. 722 (1980). It is based upon public policy as well as the terms of the agreement whether expressed or

implied. *Pugh v. See's Candies*, 116 Cal.App.3d 311, 171 Cal. Rptr 917 (1981).

The principle federal statute prohibiting discrimination in employment is Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e to 17. It generally prohibits discrimination on the basis of age, race, national origin, sex and religion by employers, unions and employment agencies in all aspects of employment. Other federal constitutional provisions, statutes and regulations also prohibit discrimination in employment but they do so through narrower prohibitions that apply to fewer employers. These other sources of federal law have been interpreted and applied consistently with Title VII. They have also been influenced by doctrines developed under Title VII, in many instances to the point of adopting them in their entirety.

Among these provisions are the due process clause of the fifth amendment, the equal protection clause of the fourteenth amendment, and to a lesser extent, the religion clause of the first amendment prohibiting discrimination on the basis of race, national origin, sex, and religion by governmental employers. These prohibitions are enforced against state and local governments by the Civil Rights Act of 1871, 42 U.S.C. § 1983, which grants a private right of action for deprivation of federal rights under color of state law.

Title VII prohibits two forms of discriminatory practice: disparate treatment, or intentional discrimination, and disparate impact, or discriminatory effect. Disparate treatment employment practices are those which intentionally take into account the individual's race, national origin, sex or religion. Proof of discriminatory motive is critical and is a factual issue for the trial court. *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985). Practices which result in actionable disparate impact are those which are supposedly neutral but which have a disproportionate adverse impact on indi-

viduals of a particular race, national origin, sex or religion and are not justifiable as being a business necessity. The latter need not be intentionally discriminatory. Either theory may be applied to particular sets of facts. *Teamsters v. U.S.*, 431 U.S. 324, 335 n. 15 (1977). However, disparate impact will not apply where there is no "neutral" practice while both theories apply where a "neutral" rule is intentionally discriminatorily enforced.

The standards governing the analysis and disposition of claims of intentional disparate treatment are set forth in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). If the claimant carries his initial burden of establishing a prima facie case of intentional discrimination, he establishes a rebuttable presumption and it then becomes incumbent upon the defendant to produce evidence to show some legitimate non-discriminatory reason (a bona fide occupational qualification) for the complained of action. Once the defendant has carried this burden, it shifts back to the plaintiff to show that the stated reasons were in fact a pretext.

The initial burden of proof is satisfied if the plaintiff shows that he/she belongs to a protected class, had applied for and was qualified for a job for which the employer was seeking applicants, was rejected despite qualifications and after this rejection the position remained open and the employer continued to seek applicants from persons of plaintiff's qualifications. This may be rebutted by a showing that the person receiving the position was equally or better qualified. An employer has discretion to choose between equally qualified candidates. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

Meeting the specific *McDonnell Douglas* requirements is not the only means by which plaintiff may make the requisite prima facie showing. 431 U.S. at 358. However accomplished, the plaintiff must carry the initial burden of offer-

ing evidence adequate to create an inference that an employment decision is based on discriminatory criteria which is illegal under the Act. This burden is met, when the plaintiff has shown that it is "more likely than not" that the employer's action was based on an unlawful consideration.

The plaintiff's ultimate burden remains to show by a preponderance of the evidence that the employer's action was based on unlawful discriminatory conduct, i.e. that it was not justified. Evidence that supports the employer's articulated reasons may be introduced during the plaintiff's presentation of the prima facie case and the plaintiff is required to counter such evidence and offer proof as to pretext before resting. *Correa v. Nampa School District*, 645 F.2d 814 (9th Cir. 1981).

This process of shifting the burden structures the decision making process in the district court. In those cases where both parties carry their initial burden of producing evidence of discrimination and of claimed legitimate non-discriminatory reasons, the rebuttable presumption of discrimination drops out and the court must then determine the ultimate question of disparate treatment; whether the defendant has intentionally discriminated improperly against the plaintiff. *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983).

The most common theory used to show class-wide discrimination is that of disparate impact. This theory was formulated in the Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Such a claim does not require proof of intentional discrimination. Discriminating impact is sufficient. Plaintiff must first show that a hiring or promotion system had an adverse impact on a protected group, e.g. a lack of objective criteria in a promotion system which results in a disparity in job promotions. The system may be defended by showing a justifying legitimate business

consideration, i.e. business necessity. *Wang v. Hoffman*, 694 F.2d 1146 (9th Cir. 1982).

Claims of class-wide disparate treatment usually require evidence in the form of statistics. These are also often used to prove disparate impact and can, standing alone, present to a prima facie case. *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

The relevance and probative effect of statistics, however, must be determined on a case by case basis. Their usefulness depends on all of the surrounding facts and circumstances. *Teamsters v. U.S.*

The prima facie case rules differ for disparate treatment and disparate impact cases. *Lewis v. Bloomsburg Mills*, 773 F.2d 561, 572 (4th Cir. 1985). The former involve intentional discrimination and the latter ostensibly neutral practices. Each has a distinct defense — bona fide occupational qualification and business necessity.

Under either theory, the Court is required to balance the defendant justification against the national interest in equal employment opportunity for all persons. *American Federation of State, County and Municipal Employees v. State of Washington*, 578 F. Supp. 876 (W.D. WA 1983).

The *McDonnell Douglas* procedure has been applied to charges of discrimination in the academic context. *Lynn v. Regents of the University of California*, 656 F.2d 1337 (9th Cir. 1981). *Smith v. University of North Carolina*, 632 F.2d 316 (4th Cir. 1980).

After considering all of the relevant evidence, the Court finds that these named defendants, employees of the district, who supervised plaintiff and/or were asked by plaintiff to assist her in securing advancement acted in good faith and (insofar as material) in accord with the rules and regulations of the defendant District and did not intentionally or otherwise discriminate or retaliate against the plain-

tiff in the exercise of their professional judgment or in the performance of their duties for any prohibited reason, including but not limited to her age, sex or race.

The Court has examined and evaluated all of the evidence of plaintiff's contacts and experience with the named defendants and finds no evidence of conspiracy to discriminate against plaintiff for any prohibited reason, including but not limited to age, sex or race or to deprive her of any of her constitutional rights. There is no credible evidence that she was ever singled out because of her age, sex or race or that any concerted action was ever taken against her for these or any other prohibited reason.

No protected activity undertaken by plaintiff was the basis or reason for any of the acts or omissions of the defendants. There is no evidence of harrassment or retaliation.

Plaintiff constantly sought promotion. She faults those individuals and the system which she believes denied her the opportunity to qualify for and receive it. She believed that her recognized scholastic qualifications far exceeded those of successful candidates and that this should be controlling. Underlying this belief is her mistaken conviction that her credentials should be the final decisive factor and that any lack of rapport with her fellow faculty members was not particularly relevant to promotability. The latter is always a prime factor, properly taken into consideration in the interest of morale and the continued harmonious operation of the school.

The Court has no reservations about plaintiff's competence in the classroom but she continually placed too much emphasis on her recognized teaching and academic achievements in her quest for promotion, overlooking the importance of developing leadership qualities and an ability to maintain a successful working relationship with her peers at

the schools where she was employed. This was a mistake since the latter is a bona fide occupational qualification for promotion to the positions she sought. When given quasi-administrative duties, she did not distinguish herself and, on occasion, precipitated negative reaction from the faculty.

Plaintiff has not established by a preponderance of the direct factual evidence that any action or omission by the named defendants or any other employee of the district was directed at any protected status or activity of hers.

If we accept as true, the alleged "discriminatory" remarks which plaintiff alleges were made in her presence we also must find that they were casual and, on at least one occasion, misinterpreted by the plaintiff. The context in which they were made negates discriminatory intent or action by the speaker and does not imply any indication of district policy.

Dr. Lingel's submission of an evaluation in 1981 was made in good faith in the performance of his duties. One may quarrel with this decision but the evidence negates any improper motive and there is no evidence that plaintiff's chances would have improved had he not done so. Dr. Lingel's advice, appointment and recommendation procedures give no evidence of discriminatory animus against white females. This includes his decision to keep Mrs. Carlock as acting principal after Mr. Van Sooy left. Taking all bona fide occupational qualifications into consideration, she was most qualified. It was appropriate under the circumstances.

-His subsequent correspondence with plaintiff showed no sign of retaliation, discrimination or harrassment. He continued to offer to assist plaintiff even though he knew that she had filed this lawsuit. (Exhs. 109 and 388.)

In his position and under the circumstances in which the 1975 interview was held, Dr. Handler's response was not

inappropriate. He was under no duty to advise plaintiff on behalf of the district. His advice to try elsewhere was that commonly given in such situations.

There was a personality conflict between the plaintiff and various of the defendants or representatives of defendant School District which was never resolved. An illustration is the "conflict" with Zikas whose conduct was proper under the circumstances and appears to have been at times prompted by certain mannerisms and conduct of plaintiff which the former found distracting. The plaintiff had a practice of note and memo writing and of keeping a written record of all her contacts (illustrated by the voluminous evidentiary material presented in this action). Zikas told her not to write any more notes. This was a reasonable request. (Exh. 267.) Plaintiff felt that it was discrimination.

Even after plaintiff filed her claim Mrs. Zikas' response to situations which arose was at all times appropriate and consistent with her responsibility to plaintiff and to the school. There is no evidence of harrasment or retaliation because of any protected activity by plaintiff.

A Plaintiff is entitled to recover damages for serious emotional distress though there is no accompanying physical harm if the proximate cause of such serious emotional distress was the negligent conduct or wilfull violation of statutory standards by the defendants. *Molien v. Kaiser Foundation Hospitals*, 27 Cal.3d 916, 167 Cal. Rptr. 831 (1980).

There is no evidence that any of the named defendants or their employees has ever acted intentionally, outrageously or with reckless disregard so as to cause plaintiff emotional distress. Plaintiff has not suffered any monetary damage or loss as a result of her alleged emotional distress.¹⁰ The

¹⁰See Deposition of Shirley Loftis, Vol. IV, P. 73, 11. 22-25.

latter is entirely subjective in nature, without objectively verifiable manifestation. Plaintiff has a feeling of embarrassment because she is "still in the classroom."¹¹

Plaintiff alleges a violation of the obligation of the school district under the law of California to deal fairly and in good faith. Arbitrary conduct directed towards an employee or employees violates this covenant. *Clearly*. As indicated above, the Court finds no evidence that Dr. Lingel or the school district did not deal in good faith and fairly with the plaintiff.

Retaliation is established by showing that an employee had participated in a protected activity and that this resulted in adverse treatment. In the instant case, this would be the filing of the claim and later the lawsuit and a showing that plaintiff has been subject to adverse employment action having a casual connection with the protected activity. *Hochstadt v. Worcester Foundation*, 425 F. Supp. 318 (D. Mass. 1976). The Court finds no retaliatory conduct by Dr. Lingel or the school district or by any of the other named defendants. There is no evidence of any adverse action taken by them which was prompted by the plaintiff's filing of a grievance or this lawsuit.

In addition to plaintiff's allegations that the named individual defendants denied her the experience which would have qualified her for promotion, i.e. meaningful opportunities to enhance her chance of being promoted, she complains of her repeated failure to pass the Training and Experience ("T & E") portion of the examination process. This claim is directed against the School District.

None of the persons named as defendants is or was at any time in a position of direct authority over the promotional selection process.

¹¹*Id.*, p. 67, 11. 4-26.

On behalf of the District, Mr. Nishisaka met with plaintiff to discuss results of her 1979 promotional examination. She had failed the T & E part. He gave her much the same advice as the other defendants, i.e. transfer to a Title I school and seek out sub-administrative assignments. She did not seek such a transfer.

The T & E Committee's evaluation of plaintiff's 1979 and 1981 applications demonstrates defects in the district's rating system at that time and the casual manner in which it was administered. (Exhs. 264-265). Despite the enormous task¹² a valid criticism of the training and experience rating method is that it is actually quite subjective. This can be demonstrated by an analysis of the ratings actually given by the six individual raters who made the evaluation in 1979. A chart of the ratings shows them to be "scattered." (Exh. 423.) They demonstrate errors known as the "central tendency" and the "halo" effect, indicating a tendency on the part of raters to adopt a uniform category in the middle of a scale and use it more or less indiscriminately whereas most applicants have both strengths and weaknesses. The reason for this may be found in the fact that the categories are vague and subjective. The words describing them have a limited meaning and do not mean the same to each rater. This can possibly be cured by using a single rater but, even in such a case, standards will shift.

Other irregularities existed in the rating system e.g. it allowed a score to be reduced because of type size although there were no specifications as to the type size that should be used and the type was the same size as that of the questions on the reference sheet. However, it is not shown that the same criteria was not applied to all applicants.

¹²There were over 400 applications for each examination and up to 800 made each final list. (Exh. 426.) The size of the list was based upon expected vacancies.

The Court finds that the rating system had many weaknesses growing out of vague standards and words whose subjective meanings may differ between raters. It was largely implemented and controlled by one individual whose qualifications are ambiguous at best. It was subjective and lacked sufficient controls or norms. Although no rating system may be completely objective, some are more so than others.

Despite its shortcoming, there is no convincing evidence that the rating procedure, itself, discriminated against plaintiff or any other applicant because of sex, race or age. Nor is there competent evidence that it has had a "chilling effect" operating against whites, women, persons over 40 years of age or any combination of these with respect to their applying for promotions. The fact that the procedure is subjective does not necessarily mean that it is discriminatory. 694 F.2d at 1148.

A possible exception is the "recency" factor, which has a potential for age discrimination in that it favors a younger person whose experience may be more "recent.". However, this has been validated as a necessary employment practice. The district has changed considerably in the last 20 years and its requirements and programs have been correspondingly altered. The "recency" factor is job related. The Court has carefully considered all of the evidence relating to the T&E examination and rating and is not convinced by a preponderance of the evidence that it is discriminatory as to any protected class or activity.

IV.

THE STATISTICAL EVIDENCE

A. FINDINGS OF FACT

If two groups tend to be equally selected, their rates of selection should be similar. There are two standards in common use when statistics are offered as proof of discrimination or unequal treatment in employment practices and procedures. These are mathematicians' conventions for expressing the degree of variation from perfect randomness which can be expected in a given sample.

The 80% or four-fifths rule when applied to selection states that if the lower selection is less than 80% of the higher selection there is an inference of adverse impact.

The statistical significance rule assumes that there are five changes in a hundred that the difference could be by chance. Anything in excess of that is considered significant. The 5% rule is analyzed by use of the standard deviation test to determine if the difference reached is a significant level of reliable probability. If the difference is found to exceed 1.96 (sometimes rounded off to 2) it meets the 5% level. A 1.96 standard deviation is equivalent to a probability of only 1 in 20 of the corresponding difference being due to chance. The United States Supreme Court has accepted a standard deviation difference of "greater than 2 or 3" as indicating a significant or real difference. *Castaneda v. Partida*, 430 U.S.C. § 482 (1977). Another means of checking the 5% level is the CHI square analysis. Using CHI square, the figure of 3.84 (1 in 20) or larger is significant.

The four-fifths (80%) rule speaks only to the question of adverse impact and is not intended to resolve the ultimate question of unlawful discrimination. It merely establishes a numerical basis for drawing an initial inference and for

requiring additional information. It is not intended to be controlling in all circumstances.¹³

A statistical analysis of administrative staffing in the Los Angeles Unified School District by race and sex covering female versus male, white versus black, white female versus black female, white female versus black male and white female versus white male for the years 1979, 1980, 1981, 1982 and 1983 (total of 25 comparisons) found that whites, white females and all females were significantly under represented in all 25 comparisons in terms of those employed in the jobs of teacher at the elementary level versus those employed as assistant principals. (Exhibit 422.) The standard deviation ranged from 3.24 to 12.23. This, however, is not a true "adverse impact" study because it is not based on the actual labor pool of qualified elementary teachers, those possessing administrative credentials.

A similar comparison was made for the years 1980, 1981, 1982 and 1983 (a total of 20) between those holding the job of elementary teacher with administrative credentials and those holding positions as assistant principal in the elementary schools. Whites, all females and white females were found to be significantly underrepresented in over half of the comparisons for the year 1984. For the four years under consideration, whites compared with black, white females compared with black females and white females compared with black males were found to be significantly underrepresented, the standard deviation ranging from 1.90 to 4.10.

When these statistics are considered alone, it may be concluded that there was an adverse impact in the promotion procedure for the position of assistant principal elementary when comparisons were made with elementary

¹³See Questions and Answers on Uniform Guidelines on Employee Selection Procedures, 44 Fed. Reg. 11996 (1979). (See Exh. 269.)

teachers with administrative credentials as a labor pool although it is conceded that these studies were not direct adverse impact analyses.

A comparison by race and sex of the labor pool with the percentage of applicants for the job of assistant principal was made for the promotion cycle 1975-6, 1976-7, 1978-9 and 1981-82 (20 comparisons). A CHI square analysis was used for this evaluation and the figures vary from 34.84 to 768.45. A CHI square is a function of both difference and chance. The larger a CHI square, the more certain that it did not occur by chance. However, a large CHI square does not necessarily represent a large difference. The lowest number of applications from were females, whites and white females with the latter most adversely affected. They have the lowest application rates. For them the likelihood of the lower rate being due to chance was less than one in a million. As indicated previously, less than 1 in 20 is considered statistically significant. It should be noted that this was not based upon the labor pool of those elementary teachers that had administrative credentials and therefore was not an adverse impact study but an inference was raised that there had been a chilling effect on the application of whites for the job of assistant principal particularly the application of qualified white females.

B. DISCUSSION

Properly authenticated statistics showing imbalance are probative in a discrimination case as often a telltale sign of purposeful discrimination. *Teamsters*. Statistical evidence may establish a prima facie case in an individual as well as a class action discrimination case. *Davis v. Califano*, 613 F.2d 957 (D.C. Cir. 1980). However, it should not necessarily be a determinative factor. *Harper v. Transworld Airlines*, 525 F.2d 409 (8th Cir. 1975).

"[S]tatistics are not irrefutable; they come in infinite variety and, like any other kind of evidence, they may be rebutted. In short, their usefulness depends on all the surrounding facts and circumstances." 531 U.S. at 340. The ultimate test is whether the plaintiff offered testimony adequate to create an inference that employee decisions were based on discriminatory criteria illegal under the Act.

The size of the sample is important in deriving statistics. *Teamsters*. Comparisons must be relevant. The relevant labor pool must be one that is qualified for the position in issue. *Pack v. ERDA*, 566 F.2d 1111 (9th Cir. 1977). The degree of statistical disparity that warrants a finding of a prima facie case will depend upon all the circumstances. The use of the "standard deviation" for assessing the significant in a Title VII case has been approved. *Hazelwood*. However, "the mathematical conclusion that the disparity between . . . two figures is 'statistically significant' does not . . . require an apriori finding that deviations are 'legally significant.'" *United States v. Test*, 550 F.2d 577, 584 (10th Cir. 1976).

Statistics can be deceiving. Relevant factors may be excluded, e.g. the career patterns of males vs. females and black vs. white. because of factors over which the employer may have little or no control the races as well as the sexes may have different goals and perceive different paths to success.

Although their relevance was conceded, no statistical evidence was offered by either side as to the weight or effect on employment to be given these very real social factors which are prevalent in the district.

There have been great changes in the district since the 1960's. These are reflected in the current administrative and staff development programs. Numerous racially isolated minority schools have developed special requirements and a new Administrative Development Program has come out of

their needs. Greater emphasis has been placed on multiracial experience. This has changed the nature and the requirements of an administrator's job.

The ethic changes in the school district have been dramatic. Minorities, collectively, are now in the majority.

Since the nature of the job and the programs have changed, those whose last experience was in a '60's development program require retraining.

Many of the new training programs grew out of *Crawford*. They were developed to enhance the quality of teaching and administration in schools significantly affected by the Court's desegregation order. This was the program offered to plaintiff by Mr. Van Sooy which she examined and declined. (Exh. 277.)

It involved a transfer to racially isolated minority (RIM) schools which are historically difficult to staff. They are also called "PHBAO" schools (predominately Hispanic, Black, Asian and others).

It has been difficult to get teachers to transfer to these schools, especially white teachers. This difficulty must be factored into any statistical analysis showing a significant difference in application and selection rates.

The prima facie showing against Dr. Lingel and the district was largely if not entirely based upon plaintiff's statistical evidence.

The Court finds that while the statistical evidence presented by plaintiff was sufficient to make a prima facie case of intentional discrimination or adverse impact against Dr. Lingel and the L.A.U.S.D., the evidence as a whole supports a finding that there were sufficient legitimate non-

discriminatory reasons¹⁴ for plaintiff's lack of advancement and they were not a pretext. The plaintiff has failed to show by a preponderance of the evidence that the employer's action was based on intentional discrimination alone and that without it, she would have been advanced. *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977); *Muntin v. State of California*, 738 F.2d 1054 (9th Cir. 1984). The prima facie case has been rebutted by a showing of "bona fide occupational qualification."

Statistics may also be used by the defendant in proving a lack of discriminatory intent. *Furno Construction Corp. v. Waters*, 438 U.S. 567 (1978).

From 1976, if not earlier, to the present, the T & E portion of the District's Elementary assistant Principal examination process has not, at any time, shown a statistically significant disproportionate impact against whites or women. There has been no "adverse impact" on whites or females during this period for the Elementary assistant Principal T & E examination, nor any "gross disparity" in passing rates adversely affecting whites or women. Statistically reliable analyses demonstrate to this Court that, in no instance from 1976 to the present with respect to the Elementary Assistant Principal T & E component, has there been adverse effect against women or whites. This Court specifically finds that the conclusions reached by defendants' witness Dr. David Friedland are true and correct under the facts of this case and the statistical evidence introduced, and hereby adopts and incorporates Dr. Friedland's conclusions, as set forth in Exhibit 158

This Court further finds that the T & E process for the Elementary Assistant Principal examination has been, since

¹⁴See discussion under *Parties, supra*. No prima facie showing was made against defendants Hoskins, Van Sooy, or Neuschwander as to any of the counts in the complaint. Their actions were clearly justified.

at least 1976 to the present, and specifically including the 1979 and 1981 examination, valid and job related. This Court specifically finds that the conclusions reached by Dr. Friedland as reflected in Exhibit 217 are true and correct, and hereby adopts and incorporates those conclusions, as set forth in Exhibit 217.

The Court specifically finds that there has been no statistically proven adverse impact against persons over 40 in the promotional selection process for Assistant Principal, Elementary, from 1972 to the present. (Exh. 220.)

The Court finds that claims of disparate impact such as prohibited by the various statutes have not been proven. The lack of evidence regarding material and pertinent sociological factors mitigates against a finding that such an impact exists based solely upon the statistical evidence offered. It is true that a prima facie case is established when it is demonstrated that there is a lack of objective criteria in the promotion system which results in some sort of disparity in job promotions. *Wang*. However, while the Court has found fault with the promotional system, disparate impact has not been convincingly demonstrated nor has it been demonstrated that an alternate practice with less discriminatory impact is actually viable and available. The presumption raised by plaintiff's statistics has been rebutted by defendants proof of "business necessity" and of existing social factors which invalidate the pure statistical calculations.

There is an affirmative duty to employ objective criteria for promotions. The use of subjective criteria is closely scrutinized. *Senter v. General Motors*, 532 F.2d 511 (6th Cir. 1976). The Court finds that the promotional standards currently in use in the school system are not so vague and subjective as to be unfair per se. *Johnson v. Uncle Ben's*, 628 F.2d 419 (5th Cir. 1980).

There is no showing that there was disparate impact on the labor pool based upon prohibited standards. It follows that there is no showing that such an impact in any way affected the plaintiff's employment and the evidence presented of employment practices, in general, does not show prohibited disparate impact which might impose liability in the absence of specific evidence of disparate treatment or of discriminatory intent.

The Court finds no incident in which the plaintiff has applied for a job for which she was qualified and for which the school district was seeking applicants wherein she was rejected despite her qualifications and the position given to another applicant who was not equally or better qualified. *Texas.*

The foregoing constitutes the Court's findings of fact and conclusions of law.

Judgment will be entered for the defendants on all counts, the parties to bear their own costs.

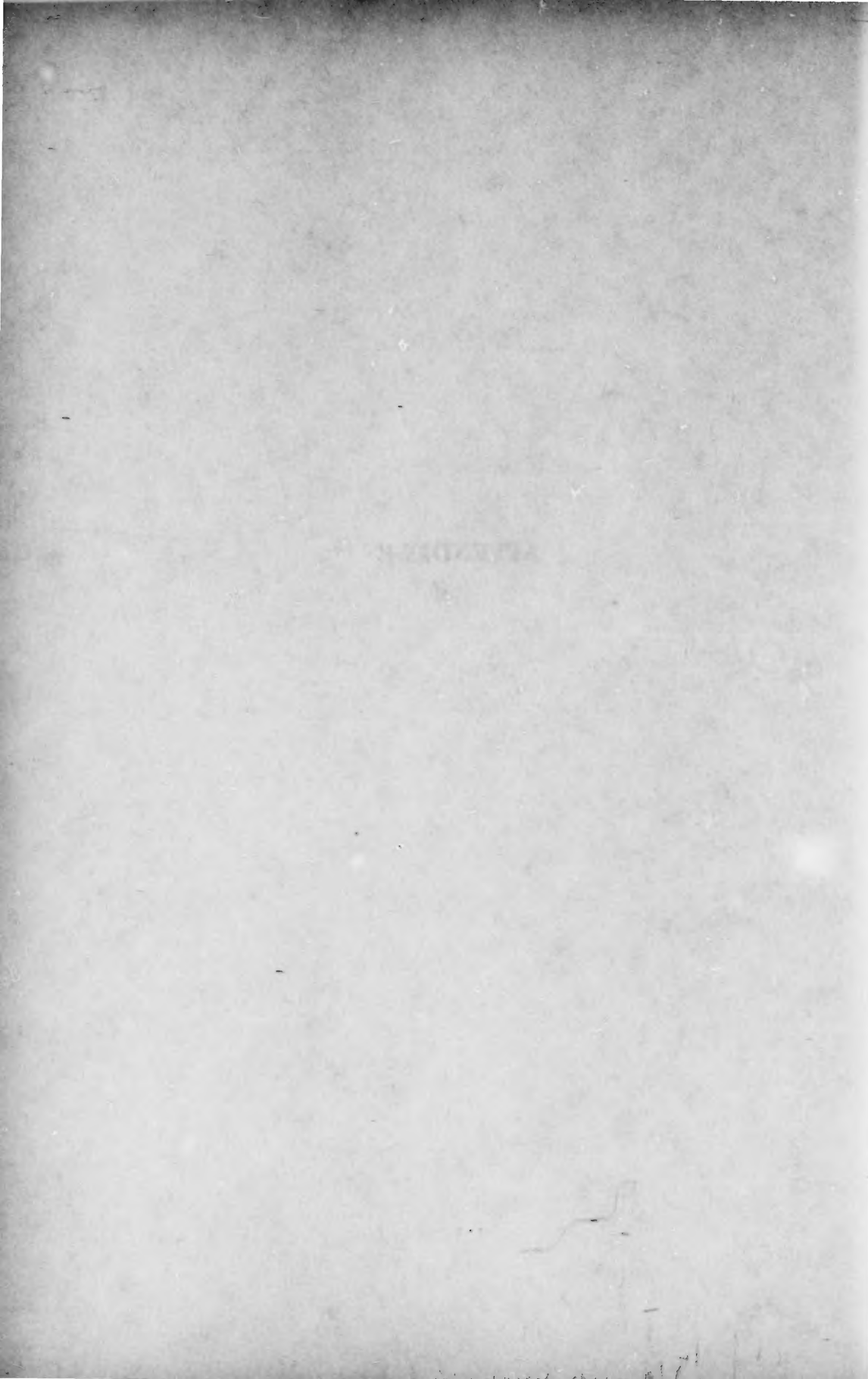
IT IS SO ORDERED.

DATED: This 19th day of September, 1986.

JOHN R. KRONENBERG
United States
Magistrate



APPENDIX B



B-1

No. CV 81-5071-K

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHIRLEY LOFTIS,
Plaintiff,

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Defendants.

JUDGMENT

Entered September 23, 1986
Clerk, U.S. District Court,
Central District of California
By , Deputy.

IT IS ADJUDGED that the Court finds in favor of the
defendants on all counts and that the action is dismissed.

DATED: This 19th day of September, 1986.

JOHN R. KRONENBERG
United States Magistrate

APPENDIX C



CA No. 86-6657
D.C. No. CV 81-5071-K

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHIRLEY LOFTIS,
Plaintiff-Appellant,

VS.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Defendants-Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John Kronenberg, Magistrate, Presiding

Submitted April 7, 1989 — Pasadena, California**
Before: WRIGHT, FARRIS, AND NELSON, Circuit
Judges

Filed June 20, 1989

Cathy A. Catterson, Clerk, U.S. Court of Appeals.

Loftis appeals the district court's grant of judgment in favor of the defendants in her employment discrimination suit. We affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for submission without oral argument. Fed.R.App.P. 34(a) and 9th Cir. R. 34-4.

I.

INTRODUCTION

Loftis sued the Los Angeles Unified School District and seven of its officials, alleging employment discrimination based on her sex, race (white), and age (over 40). Loftis repeatedly and unsuccessfully applied for promotion from her teacher position to an administrative position as assistant principal. Loftis alleges that she was discriminated against because school district officials failed to provide her with assignments helpful for advancement, failed to appoint her to discretionary direct appointments, and withheld notification of promotion cycles. She seeks damages and injunctive relief under 20 U.S.C. § 1681 (Title IX of the Education Amendments of 1972); 29 U.S.C. § 623 (the Age Discrimination in Employment Act), 42 U.S.C. § 2000e (Title VII of the Civil Rights Act); 42 U.S.C. §§ 1981, 1983, 1985(3) (the Reconstruction Era statutes); the Fourteenth Amendment of the U.S. Constitution; Cal. Gov't Code §§ 12940 and 12941 (prohibiting employment discrimination); and California law providing for an implied covenant of good faith and fair dealing in employment contracts and for recovery for intentional and negligent infliction of emotional distress.

The district court granted judgment for the school district following a bench trial. The court previously had granted partial summary judgment for three individual defendants and, following Loftis' case at trial, dismissed all claims against three other individual defendants.

II.

STANDARD OF REVIEW

We review de novo the district court's grant of summary judgment. *E.E.O.C. v. Borden, Inc.*, 724 F.2d 1390, 1392 (9th Cir. 1984). We review the district court's findings of fact, including its finding on the ultimate issue of discrimi-

nation, under the clearly erroneous standard. *Roberts v. College of the Desert*, 870 F.2d 1411, 1418 (9th Cir. 1988); *Stones v. Los Angeles Community College District*, 796 F.2d 270, 273. We review de novo legal questions, such as the appropriate legal standard for evaluating evidence. See *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984).

III.

DISCUSSION

A. INTRODUCTION

To prove her employment discrimination claims, Loftis must establish either that she was the victim of disparate treatment — intentional discrimination — or that the district's policies or practices had a disparate impact — discriminatory effect. See *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335-36, n.15 (1977). The same substantive requirement — proof of disparate treatment or of disparate impact — applies to claims filed under the Age Discrimination in Employment Act as to Title VII. See *Teamsters*, 431 U.S. at 335-36 n.15 (Title VII); *Borden's*, 724 F.2d at 1392 (ADEA); see also *North Haven Board of Education v. Bell*, 456 U.S. 512, 530 (1982) (Title IX) (providing remedy of federal funds cutoff). A successful claim of discrimination under §§ 1981, 1983, or 1985 requires proof of discrimination intent. See *Stones*, 796 F.2d at 272 (§ 1981); B. Schlei and P. Grossman, *Employment Discrimination Law* 693-94 (1983) (§§ 1981, 1983, 1985).

To prove disparate treatment, Loftis must show that the district or its officials had a discriminatory motive in rejecting her promotion requests. See *Borden's*, 724 F.2d 1392. To prove disparate impact, Loftis need not show that the district intentionally discriminated against her. She need only show that facially neutral practices of the district had a

disproportionately adverse impact on her because of her sex, race, or age and cannot be justified on the basis of business necessity. *Teamsters*, 431 U.S. at 336 n.15.; *Borden's*, 724 F.2d at 132-93.

B. DISPARATE TREATMENT

The district court found that the school district successfully rebutted Loftis' prima facie case of disparate treatment by articulating legitimate, nondiscriminatory reasons for rejecting Loftis' promotion requests. See *McDonald Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). The court found that Loftis failed to prove that the district or its officials intentionally discriminated against her because of her membership in a protected group, the ultimate question in a discrimination case. See *United States Postal Serv. v. Aikens*, 460 U.S. 711, 715 (1983).

The district court's decision was not clearly erroneous. The district court considered the shortcomings of the promotion process and the actions of the individual defendants in determining that no intentional discrimination existed. Considerable evidence of nondiscriminatory reasons for the challenged conduct was presented at trial. The district court found that Loftis was not promoted because of her problems in getting along with her peers and immediate superiors and her failure to request certain assignments, rather than as a result of her race, sex, or age. The district court found that those receiving the promotion were as qualified or better qualified than Loftis. It also found that white females, against whom Loftis claims the district and its officials discriminated, in fact received approximately 50% of the assistant principal and principal, elementary appointments made in Region A after 1978.

Title VII allows an employer to hire an employee "on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide

occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” 42 U.S.C. § 2000e-2(e) (emphasis added); see *Dothard v. Rawlinson*, 433 U.S. 321, 332-34 (1977). The district court referred to the school district’s need to consider factors such as leadership qualities and ability to maintain successful working relationships with peers as a bona fide occupational qualification. Although we have sometimes used the phrase “bona fide occupational qualification” in the same manner as the district court, see, e.g., *Frangrante v. City and County of Honolulu*, No. 87-2921, slip op. 1709, 1714, 1717-21 (9th Cir. March 6, 1989), a requirement of leadership qualities more properly is characterized as a “legitimate, non-discriminatory reason” that an employer may cite to overcome a prima facie case of disparate treatment. See *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).

The district court also found that the school district and its officials did not act in a retaliatory or harassing manner. The school district presented evidence responsive to Loftis’ allegations of harassment and retaliation. The district court’s conclusion is not clearly erroneous.

C. DISPARATE IMPACT

The district court found that Loftis established a prima facie case of disparate impact. To rebut such a claim, the school district may refute the statistical evidence and show that no disparate impact exists. See *Connecticut v. Teal*, 457 U.S. 440, 446 (1982). Alternatively, the school district may prove the job relatedness or business necessity of the challenged employment practices. See *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975); *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-32 (1971). The district court determined that the school district successfully rebutted the disparate impact claim in both of these alternative ways.

1. No Adverse Impact

Loftis claims that the district court made two legal errors in evaluating the statistical data and expert testimony of the parties. First, she maintains that because she is challenging the entire promotion process, each of its components must be examined to determine disparate impact. The school district's expert testimony addressed only the Training and Experience portion of the process because that was the only portion of the promotion process Loftis did not complete successfully. Second, Loftis argues that the court must address discrimination against her as a white female, as opposed to evaluating only discrimination against whites and females as two distinct groups. The school district's expert separately analyzed statistics by race and sex and did not combine them into the category of white females used by Loftis' statistical expert.

The district court erred in concluding that the school district's statistical expert rebutted Loftis' prima facie case. The statistical evidence and expert testimony cited by the district court only addressed the Training and Examination component of the promotion process. Loftis alleged discrimination in all aspects of the process and her statistical data purports to show discrimination in the entire promotion process. The school district argues that only the Training and Examination component need be addressed, because that is the part of the promotion process that Loftis failed. However, Loftis also unsuccessfully attempted to obtain an assistant principal position through the direct appointment process, a route separate from the Training and Experience evaluation process that fills approximately 25% of the positions. The school district's rebuttal failed to address this aspect of Loftis' allegations.

The district court also erred in failing to examine discrimination against white females as a group, as opposed to whites or females. Loftis may establish a prima facie case of

disparate impact against white females, as opposed to whites or females, if she identifies specific employment practices and shows a casual relationship between the identified practices and the impact. See *Robinson v. Adams*, 847 F.2d 1315, 1318 (9th Cir. 1988) (black males v. blacks); see also *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1416 (10th Cir. 1987); *Jefferies v. Harris City Community Action Ass'n*, 615 F.2d 1025, 1032 (5th Cir. 1980) (black females v. blacks or females). The district court found that such a prima facie case had been established. It then accepted the school district's refutation of that prima facie case based on an analysis of whites and women as separate categories. *Id.* at 37-38.

The school district incorrectly reads *Robinson* to state that discrimination claims against subgroups such as white females are not required. The issue in *Robinson* was whether the evidence presented by Robinson was sufficient to make out a prima facie case of disparate impact against black males, not whether such a subgrouping was valid. See *Robinson*, 847 F.2d at 1318; *id.* at 1321 (Pregerson, J., dissenting).

In sum, the school district's statistical evidence failed to refute Loftis' prima facie case of disparate impact because it left untouched two aspects of that case. The school district's statistical evidence (as described by the district court) did not address the "complete promotion process." Nor did it address the subgroup of white females, as opposed to whites or females, although the district court found that Loftis had made out of prima facie case of discrimination against white females.

2. Validity of the Challenged Practices

The district court found that the school district had legitimate reasons for the practices that prevented Loftis from receiving a promotion. The court stated that Loftis'

prima facie case was rebutted by a showing of "bona fide occupational qualification." It stated that the Training and Examination process, but not any other challenged practice, was "valid and job related." It also stated that the school district's "proof of business necessity and of existing social factors" refuted the prima facie case. Citing *Burdine*, the district court also stated that no applicant with lesser qualifications was given a position sought by Loftis.

The district court used an incorrect legal standard in reaching its result. A prima facie case of disparate impact is not rebutted by showing that no lesser qualified applicants were promoted. The practice must be shown to be job related. See *Albermarle*, 422 U.S. at 425. Nor do "existing social factors" provide a basis for overcoming a prima facie case. The district court cites no authority for this proposition, nor do the appellees attempt to defend it.

In its opinion, the district court focused on detailing why the Training and Experience component was a valid, job related practice. It discussed other challenge practices, such as the direct appointment process, in a conclusory way. However, the district court did state that Loftis' failure to receive a direct appointment was due to her lack of rapport with other faculty and school officials, as opposed to any discriminatory motive on the part of school officials. As discussed above, the district court determined that Loftis lacked the necessary leadership qualities and ability to maintain successful working relationships. We interpret these statements of the district court to be a finding of business necessity for the school district's failure to promote Loftis through the direct appointment process. (We read the district court's use of the phrase "bona fide occupational qualification" in its disparate impact analysis as a synonym for the business necessity defense, as we did in the disparate treatment analysis.)

In sum, the district court's determination that the school district rebutted the prima facie case of disparate impact is not clearly erroneous.

3. Age Discrimination

Based on the expert testimony of the school district, the court properly determined that Loftis failed to prove adverse impact against those over 40. The district court also properly found that business necessity justified the school district's limiting its consideration of a candidate's experience to that of the last ten years in the Training and Experience component.

D. STATE COMMON LAW CLAIMS

Loftis alleged that the school district and its officials were liable for negligent or intentional infliction of emotional distress. The district court found no evidence that any of the defendants "ever acted intentionally, outrageously or with reckless disregard so as to cause plaintiff emotional distress." Loftis did not present any evidence rebutting this finding of the district court, which forms a sufficient basis for upholding its determination as not clearly erroneous. The cases Loftis cites in support of her statement that the conclusion of the district court was erroneous concern the standards for bringing, as opposed to proving, a claim. See *Molien v. Kaiser Found. Hosps.*, 27 Cal.3d 916, 167 Cal. Rptr. 831, 616 P. 2d 813 (1980); *Alcorn v. Anbro Eng'g, Inc.*, 2 Cal.3d 493, 86 Cal. Rptr. 88, 468 P. 2d 216 (1970).

The district court stated that it found no evidence that the school district or its officials used anything but good faith in dealings with Loftis. Although Loftis has offered evidence disputing that conclusion, she has not established it to be clearly erroneous. Both the emotional distress and good faith claims are fact-driven and heavily dependent on the credibility of witnesses. The school district did present

evidence refuting Loftis' allegations. That evidence is sufficient to support the district court's determination.

F. DISMISSAL FOR LACK OF AUTHORITY OVER THE PROMOTION PROCESS AND QUALIFIED IMMUNITY

The district court's dismissal of the claims against certain individual defendants on the grounds that they acted in good faith and thus enjoyed qualified immunity is consistent with its later conclusion that Loftis was not a victim of disparate treatment. We need not reach the issue of qualified immunity because we uphold the district court's conclusion on the disparate treatment issue. Similarly, we need not address the grant of partial summary judgment to certain defendants on the grounds that they lacked authority over the promotion process because we uphold the district court's conclusion on the disparate treatment issue.

G. EVIDENTIARY ISSUES

In her opening brief, Loftis attacked certain evidentiary rulings of the district court. We review evidentiary rulings for abuse of discretion and will not overturn a ruling unless prejudice is shown. *Roberts*, 870 F.2d at 1418. Contrary to Loftis' assertions in the brief, the district court did not prevent Loftis' expert from presenting any testimony for which a proper foundation existed. Counsel for Loftis ultimately succeeded in presenting the challenged testimony for consideration by the court. No prejudice is shown. Loftis did not assert, much less demonstrate, that prejudice resulted from the exclusion of testimony from Kitzerow.

AFFIRMED.

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SHIRLEY LOFTIS,
Plaintiff-Appellant,

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Defendants-Appellees.

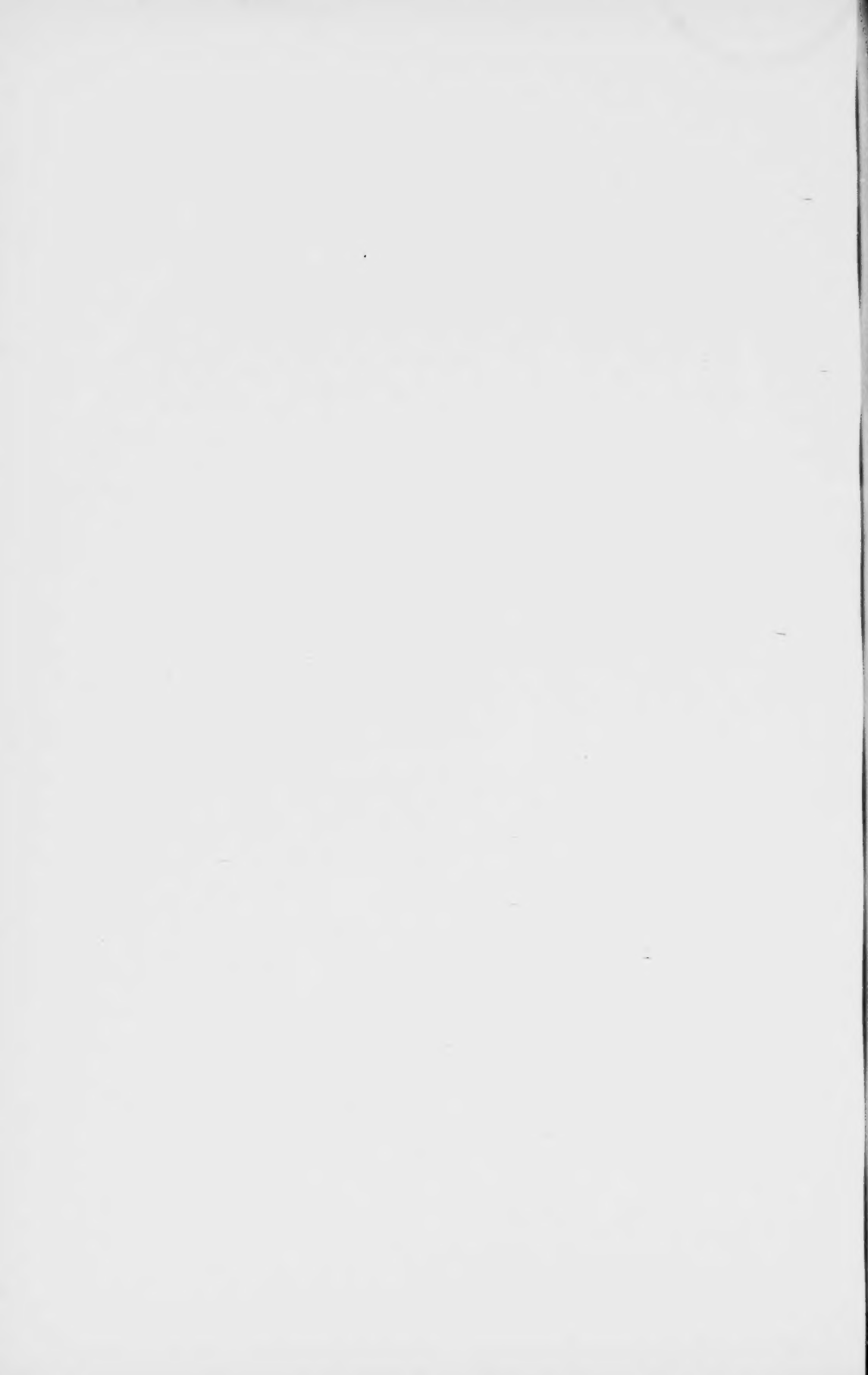
**CA No. 86-6657
DC No. CV-81-5071-K
(C.D. of California)**

ORDER

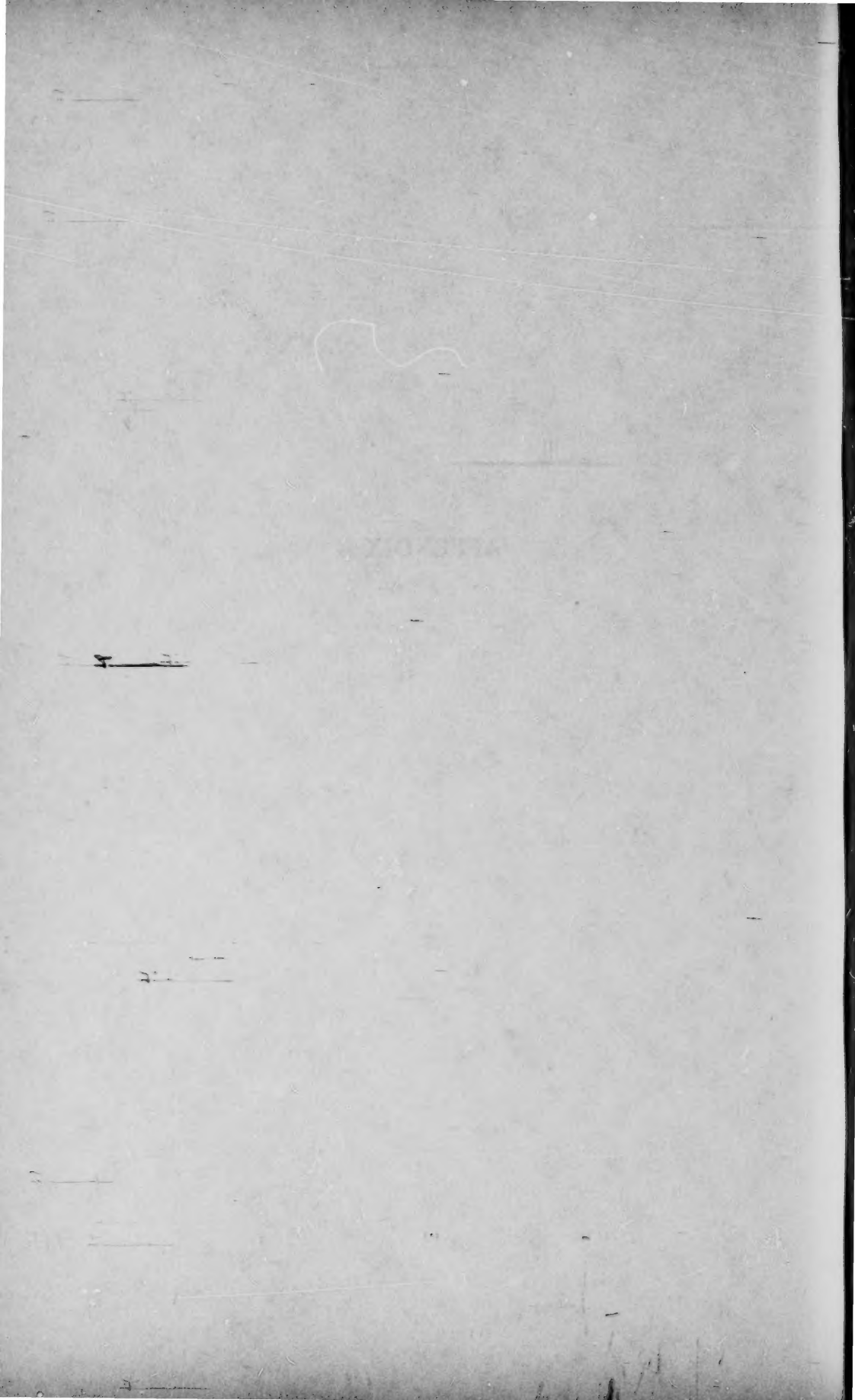
Before: WRIGHT, FARRIS, and NELSON,
Circuit Judges.

The Petition for Rehearing filed July 5, 1989 is denied.

Filed July 28, 1989
Cathy A. Catterson, Clerk,
U.S. Court of Appeals.



APPENDIX E



Petitioner's claims arise under the following constitutional provisions, statutes, and regulations:

The United States Constitution, Fourteenth Amendment, provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 provides:

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) In regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Educa-

tion or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices —

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally

been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to —

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for —

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other non-discrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

Age Discrimination in Employment Act.

29 U.S.C. 623(a) provides:

It shall be unlawful for an employer —

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any

individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

29 U.S.C. 631 (a) provides:

The prohibitions in this chapter (except the provisions of section 623(g) of this title) shall be limited to individuals who are at least 40 years of age.

Civil Rights Act of 1866.

42 U.S.C. 1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Civil Rights Act of 1871.

42 U.S.C. 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclu-

sively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Civil Rights Act of 1871.

42 U.S.C. 1985(3) provides:

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Civil Rights Act of 1871.

42 U.S.C. 1986 provides:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Civil Rights Act of 1871.

42 U.S.C. 1988 provides:

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and

statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Title VII, Civil Rights Act of 1964, as Amended.
42 U.S.C. 2000e-2 provides:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, aggregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title VII, Civil Rights Act of 1964, as Amended.
42 U.S.C. 2000e-3 provides:

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment

agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

California Fair Employment and Housing Act.

California Government Code section 12900 provides:

This part may be known and referred to as the "California Fair Employment and Housing Act."

California Government Code section 12940 provides:

It shall be an unlawful employment practice, unless upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California.

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the

refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform those duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of material status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an

employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex,

or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code.

(f) For any employer, labor organization, employment agency or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(h) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, to harass an employee or applicant. Harassment of an employee

or applicant by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment. The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment. For purposes of this subdivision only, "employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision thereof, and cities. However, "employer" does not include a religious association or corporation not organized for private profit. For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926. Nothing contained in this subdivision shall be construed to apply the definition of employer found in this subdivision to subdivision (a).

(i) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(j) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of

employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties which conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance such as a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

California Government Code Section 12941 provides:

(a) It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection of termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, or to require any changes in bona fide retirement or pension programs or existing collective-bargaining agreements during the life of the contract, or until January 1, 1980, whichever occurs first, nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may

make or have made to determine fitness for the job or position sought or held.

Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, and trade schools shall not, in and of themselves, constitute a violation of this section.

(b) This section shall not limit the right of an employer, employment agency, or labor union to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred.

Equal Opportunity Employment Guidelines

29 Code of Federal Regulations sections 1607(F) and (H) provide:

F. Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

H. Cutoff scores. Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

29 Code of Federal Regulations section 1607.11 provides:

Disparate treatment.

The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure — even though validated against job performance in accordance with these guidelines — cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

APPENDIX F

The first part of the book is devoted to a description of the various forms of the English language as they appear in the different parts of the world. The author then proceeds to a detailed account of the history of the English language, from its origin in the Germanic tongue to its present state. He then discusses the various dialects of the English language, and the influence of foreign languages upon it. The book is written in a clear and concise style, and is well illustrated with examples of the language in use. It is a valuable work for all who are interested in the history and development of the English language.

Exam
I.D. No.

LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

(Office Use Only)

NONCONFIDENTIAL
SUPERINTENDENT'S REFERENCE

DISTRIBUTION:

1. White copy to PERSONNEL
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before

to: PERSONNEL DIVISION, DEPT. A

Examination for: ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL

Applicant's Full Name: LOFTIS, SHIRLEY B.

NOTE: This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.

Please indicate:

Copy of reference given to candidate

PERSONNEL DIVISION: Please forward
copy to candidate

Signature: s/ John J. Lingel

Position: Area Supt.

Date: 12/20/81

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL
SUPERINTENDENT'S REFERENCE**

Please indicate your estimate of this applicant's potential for success in terms of the following factors.

	No Opportunity to Observe	Not Endorsed	Certain Qualifications But Insufficient Endorsement	Endorsed	Endorsed With Confidence	Endorsed With Enthusiasm
A. Organization and Management Skills						X
B. Communication Skills					X	
C. Professional Skills						X
D. Human Relations					X	
E. Academic Preparation						X
F. Experience and Growth						X
G. Personal Qualifica- tions; (Includes: Appearance, Voice, Ability to Present Ideas, Creativity, Emotional Balance, Ability to Get Along, Ethical Standards.)					X	
OVERALL PREDICTION FOR SUCCESS:						X

Remarks: (please refrain from identifying the candidate by name, ethnicity or gender.)

This Candidate has served as an elementary school teacher and acting principal at one of the our diversified socio-economic and ethnic schools. This educator provides enriched, relevant, and innovative educational programs that have upgraded the educational experiences of the children served. In addition, this candidate is a very dedicated and committed individual who consistently strives to improve services to the profession.

This candidate should be considered for the position of Elementary School Assistant Principal.

Signature: s/ John J. Lingel

Date: 12/20/81

LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

Exam
I.D. No.

(Office Use Only)

**NONCONFIDENTIAL
SUPERINTENDENT'S REFERENCE**

DISTRIBUTION:

1. White copy to PERSONNEL DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before

to: PERSONNEL DIVISION, DEPT. A

Examination for: _____

Applicant's Full Name: LOFTIS, SHIRLEY B.

NOTE: This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.

Please indicate:

Copy of reference given to candidate

PERSONNEL DIVISION: Please forward
copy to candidate

Signature: s/ John J. Lingel

Position: Area Supt.

Date: 3/21/79

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL
SUPERINTENDENT'S REFERENCE**

Please indicate your estimate of this applicant's potential for success in terms of the following factors.

	No Opportunity to Observe	Not Endorsed	Certain Qualifications But Insufficient Endorsement	Endorsed	Endorsed With Confidence	Endorsed With Enthusiasm
A. Organization and Management Skills						X
B. Communication Skills						X
C. Professional Skills						X
D. Human Relations						X
E. Academic Preparation						X
F. Experience and Growth						X
G. Personal Qualifica- tions; (Includes: Appearance, Voice, Ability to Present Ideas, Creativity, Emotional Balance, Ability to Get Along, Ethical Standards.)						X
OVERALL PREDICTION FOR SUCCESS:						X

Remarks: (please refrain from identifying the candidate by name, ethnicity or gender.)

This candidate is one of our excellent fourth grade teachers serving a multi-ethnic school community and, in this capacity, has proven to be a very sensitive, empathetic and dedicated educator. This candidate has had varied quasi-administrative experiences which have been excellent preparation for the assistant principal evaluation. This educator has won the support of all members of the school community. This candidate is a very willing and energetic worker who constantly gives extra time and effort to all educational undertakings.

It is recommended that this individual be seriously considered for the position of elementary school assistant principal.

POST

**LOS ANGELES UNIFIED SCHOOL DISTRICT
Research and Evaluation Branch**

**MEMORANDUM NO. 3
July 8, 1975**

**APPLICATION DUE: July 25, 1975
to Promotional Selection Section**

**SUBJECT: ACTING POSITION — ASSISTANT DIRECTOR,
RESEARCH AND EVALUATION**

The acting position of Assistant Director, Research and Evaluation Branch, Schedule 40, A Basis, is to be filled as soon as possible under the provisions of Board Rule 4213 pending the evaluation of the position by the promotional Selection Section. An unranked list of qualified applicants will be developed from the screening of applications submitted as a result of this announcement.

Primary Function

Assists the Director in the management and direction of the Branch.

Responsibilities

Serves in the Research and Evaluation Branch; assists the Director with the management and direction of the Branch by performing general duties in relation and addition to one of the following specific assignments: (1) plans and provides leadership to the District-wide evaluation and supplemental testing programs, or (2) plans, appraises, and interprets the educational phases of experimental or special projects and programs; may act as Branch head in the absence of the Director.

Credential

Applicants must hold a valid administration credential authorizing K-12 service.

Qualifications

Education

An earned master's degree from a recognized college or university including satisfactory completion of at least nine semester units of course work in tests and measurements, statistics, and research methods.

Experience

1. *Required.* At least eight school years in successful full-time service in a certificated position(s) in the District, at least one of which must have been in a management position(s).
2. *Desirable.* Experience in the field of measurement, research, and evaluation.

Status

Permanent certificated employee of the Los Angeles Unified School District.

For assistance, further information, or an application, please call Mrs. Mary Francisco, Research and Evaluation Branch, at 687-4881 (after July 11, 625-6207). Deadline for application to Promotional Selection Section is July 25, 1975.

APPROVED: HARRY HANDLER, Associate Superintendent, Instruction.

DISTRIBUTION: All Schools and Offices

PLEASE POST

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office**NONCONFIDENTIAL REFERENCE FOR
EVALUATION OF TRAINING AND EXPERIENCE**

(Office Use Only)

DISTRIBUTION OF NONCONFIDENTIAL
REFERENCE:

1. White copy to PERSONNEL
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before
December 18, 1981LOS ANGELES CITY SCHOOLS
PERSONNEL DIVISION, DEPT. A
P.O. BOX 3307
LOS ANGELES, CALIFORNIA 90051

_____ has applied for a position as _____

As your criteria for evaluation, consider both the quality of experiences and quantity of experiences as well as the degree of success this candidate has had in each of the areas listed in the following pages. Please indicate your recommendation for each of the factors listed. In completing this reference, you are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum. We request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact.

NOTE: *This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FORM
FOR ADMINISTRATIVE EXAMINATION****PERSONAL AND PROFESSIONAL QUALIFICATIONS****DISTRIBUTION:**

1. White copy to PERSONNEL
DIVISION
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before

LOFTIS, SHIRLEY B. has applied for a position as
ASSISTANT PRINCIPAL, ELEMENTARY

Please indicate your estimate of this candidate's potential for success in terms of each of the factors listed on this important reference form. As your criteria for evaluation, consider both the amount of experience and the degree of success in each area listed. Inasmuch as this position is one of great importance, we request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact. Your ratings and remarks will have an important bearing on the evaluation of this candidate's fitness for this position. (Please check appropriate boxes below.)

SECTION I

	Certain Qualifications, but Insufficient for	Endorsed with Confidence	Endorsed with Enthusiasm
Not Endorsed	Endorsement	Endorsed	

A. APPEARANCE AND MANNER.

Appropriate choice of clothing and good grooming. Shows friendliness, courtesy, poise, confidence, fact and enthusiasm.

X

B. VOICE, SPEECH, AND ABILITY TO PRESENT IDEAS.

Voice quality pleasing and speech clear and distinct. Conducts meetings and speaks well before an audience. Adequate and appropriate vocabulary. Is logical and to the point. Able to exchange ideas with people of varied backgrounds.

X

C. MENTAL ALERTNESS.

Alert and responsive. Grasps essential points quickly. Understands new ideas.

X

D. CREATIVE ABILITY AND ORIGINALITY.

Has the ability to create original ideas and is prepared to substantiate.

X

SECTION I

Not Endorsed	Certain Qualifications, but Insufficient for Endorsement	Endorsed with Confidence	Endorsed with Enthusiasm
-----------------	---	--------------------------------	--------------------------------

E. ABILITY TO GET ALONG WITH OTHERS.

Displays the necessary leadership characteristics for the position. Holds an opinion or point of view with assurance and a spirit of cooperation without giving offense. Gains the cooperation of others. Reacts well under tension.

X

F. EMOTIONAL BALANCE AND MATURITY OF JUDGMENT.

Displays good judgment, emotional maturity and a sense of humor. Approaches questions with an open mind. Distinguishes between the important and unimportant. Capable of making a decision and coping with emergencies.

X

G. PROFESSIONAL ATTITUDE AND ETHICAL STANDARDS.

Shows professional integrity. Has an acceptable code of professional ethics. Handles confidential material appropriately.

X

SECTION II**GENERAL PERSONAL AND PROFESSIONAL FITNESS FOR THE POSITION.**

This rating is not necessarily the average of the items listed above. It is an overall summary as to the personal and professional fitness of the candidate's success.

X

COMMENTS: (Use other side if needed): This candidate has demonstrated all of the above qualities to a high degree. This person has had major responsibilities in working with our advisory council and has been able to use skills in this area to create a feeling of cooperation between parents and the school.

Period of time the application was under my direction:
From **September 1976 to Present**

My position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: s/ Sidney C. Hoskins

Date **March 16, 1979**

LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

Exam
I.D. No.

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR
EVALUATION OF TRAINING AND EXPERIENCE**

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

A. Professional Skills

- | | |
|--|---|
| 1. Success and experiences as a classroom teacher | X |
| 2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds | X |
| 3. Participation in special programs (remedial, ESL, handicapped, etc.) | X |
| 4. Involvement in innovative teaching practices | X |
| 5. Skill in analysis and interpretation of testing programs | X |
| 6. Evidence of proficiency in counseling and guidance | X |
| 7. Participation in curriculum development | X |
| 8. Skill in supervision of instruction | X |
| 9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.) | X |
| 10. Leadership in educational organizations, workshops, etc. | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm —

A. Professional Skills

- | | |
|---|---|
| 1. Success and experiences as a classroom teacher | X |
| 2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds | X |
| 3. Participation in special programs (remedial, ESL, handicapped, etc.) | X |
| 4. Involvement in innovative teaching practices | X |
| 5. Skill in analysis and interpretation of testing programs | X |
| 6. Evidence of proficiency in counseling and guidance | X |
| 7. Participation in curriculum development | X |
| 8. Skill in supervision of instruction | X |

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)						X
10. Leadership in educational organizations, workshops, etc.						X

Remarks: This candidate had major responsibility as a classroom teacher and for one semester as opportunity room teacher. This person's major strengths are the ability to develop self-discipline in children and to secure the assistance of parents in bringing about positive change in children. This candidate continually is improving service to the school through attendance at in-service and college classes.

	Quantity of Experience		
	Up to One Semester	Two to Five Semesters	Six or More Semesters
B. Organization and Management Skills			
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.			X
2. Skill in delegating responsibility			X
3. Efficiency in management of supplies and equipment			X
4. Ability to budget and administer funds			X
5. Familiarity with modern office procedures			X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)			X
7. Skill in establishing and functioning within appropriate line-staff relationships			X
8. Ability to identify problems, assign and work within valid priorities			X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
B. Organization and Management Skills						
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.						X
2. Skill in delegating responsibility						X
3. Efficiency in management of supplies and equipment						X
4. Ability to budget and administer funds						X
5. Familiarity with modern office procedures						X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)						X
7. Skill in establishing and functioning within appropriate line-staff relationships						X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

8. Ability to identify problems, assign and work within valid priorities

X

Remarks: This person can be called on to assist effectively when participation by students is requested in talent shows, programs, demonstrations, or other events. The creative ideas for presentations are drawn from the students and put together to make a most effective final product. This candidate continually demonstrated this ability in everything that was initiated in the classroom or in working with parents and staff.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X

X

X

X

X

X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X

X

X

X

X

X

Remarks: This person has the ability to recognize small problems and effectively deal with them before they mushroom out of proportion. There is great strength in helping parents to identify student needs and bring about needed change through cooperative efforts. This candidate uses active listening skills when working with others and has a most effective way of drawing out ideas from people.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

D. Communication Skills

- | | |
|---|---|
| 1. Ability to write bulletins, correspondence and reports | X |
| 2. Skill in communicating with students and parents | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

D. Communication Skills

- | | |
|---|---|
| 1. Ability to write bulletins, correspondence and reports | X |
| 2. Skill in communicating with students and parents | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty | X |

Remarks: This candidate has well developed techniques for clarity of expression whether working with a child, parent or other staff member. This person is able to communicate ideas both verbally and in written form so that others receive a clear message.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

E. Community Participation

- | | |
|---|---|
| 1. Evidence of working with youth groups | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc. | X |
| 4. Use of community resources in the school program | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

E. Community Participation

- | | |
|---|---|
| 1. Evidence of working with youth groups | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc. | X |
| 4. Use of community resources in the school program | X |

Remarks: This person has made a distinct contribution to the advisory council, senior citizen's group, and P.T.A. through personal involvement in each group. This candidate has been a steady influence in all parent groups through attendance at every meeting and through active participation that produced results.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

F. Academic Preparation

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

Quality of Experiences				
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed with Confidence	Endorsed with Enthusiasm

F. Academic Preparation

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

Remarks: This candidate is very capable in applying previous experience to current problems. This person brings to the job a varied background which gives a good reserve to draw on for logical solutions to problems.

OVERALL PREDICTION OF SUCCESS

X

SUMMARY OF EVALUATION: Please summarize your estimate of this candidate's probable success in THIS position based on candidate's training and experience. You are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum.

REMARKS: This candidate has all the skills and abilities to become an outstanding assistant principal. This person is quick to understand the need for solutions to problems, work with others to make a plan, and then follow the plan through to the conclusion.

I feel the greatest attribute of this person is a well developed sense of appropriateness of response in any given situation. This candidate has great introspection and seeks ways to make the contributions more effective in working with students, parents and others.

This person's sincerity and enthusiasm for the job are most evident in the daily performance of duties. This candidate has a fine background of experiences to prepare for any school with any kind of staff.

This candidate gives so much of self in terms of helping students and other teachers that others feel challenged to do their best. This person is quick to

understand the essential points of a problem and see the solution through to the end.

This person will make a distinct and lasting contribution to any school where assignment may be made as an assistant principal.

Approximate time applicant was under your direction:
From **September 1976** to **Present**

Your position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: s/ Sidney C. Hoskins

Present Position: Principal

Date **March 16, 1979**

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR
EVALUATION OF TRAINING AND EXPERIENCE****DISTRIBUTION OF NONCONFIDENTIAL
REFERENCE:**

1. White copy to PERSONNEL
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before
December 18, 1981LOS ANGELES CITY SCHOOLS
PERSONNEL DIVISION, DEPT. A
P.O. BOX 3307
LOS ANGELES, CALIFORNIA 90051**LOFTIS, SHIRLEY B.** has applied for a position as
ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL

As your criteria for evaluation, consider both the quality of experiences and quantity of experiences as well as the degree of success this candidate has had in each of the areas listed in the following pages. Please indicate your recommendation for each of the factors listed. In completing this reference, you are asked to compare this candidate with all other candidates you have known, and to reduce your personal loyalties to a minimum. We request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact.

NOTE: *This cover sheet will be detached during the evaluation procedure in the interests of anonymity. In your "Remarks" please refrain from identifying the candidate by name, ethnicity or gender.*

LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division

Exam
I.D. No.

(Office Use Only)

NONCONFIDENTIAL REFERENCE FORM
FOR ADMINISTRATIVE EXAMINATION

PERSONAL AND PROFESSIONAL QUALIFICATIONS

DISTRIBUTION:

1. White copy to PERSONNEL
DIVISION, DEPT. A
2. Pink copy for your files
3. Yellow copy to candidate

Please return this form before
December 18, 1981

Please return this form before December 18, 1981

DISTRIBUTION:

1. White copy to PERSONNEL DIV.
2. Pink copy for your files
3. Yellow copy to candidate

LOFTIS, SHIRLEY B. has applied for a position as
ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL

Please indicate your estimate of this candidate's potential for success in terms of each of the factors listed on this important reference form. As your criteria for evaluation, consider both the amount of experience and the degree of success in each area listed. Inasmuch as this position is one of great importance, we request that you give a frank and critical evaluation, citing only those experiences which the candidate has had under your direction, or which you know personally to be a fact. Your ratings and remarks will have an important bearing on the evaluation of this candidate's fitness for this position. (Please check appropriate boxes below.)

SECTION I

	Certain Qualifications, but insufficient for		Endorsed with Confidence	Endorsed with Enthusiasm
Not Endorsed	Endorsement	Endorsed		

A. APPEARANCE AND MANNER.

Appropriate choice of clothing and good grooming. Shows friendliness, courtesy, poise, confidence, fact and enthusiasm.

X

SECTION I

Not Endorsed	Certain Qualifications, but Insufficient for Endorsement	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
-----------------	---	----------	--------------------------------	--------------------------------

B. VOICE, SPEECH, AND ABILITY TO PRESENT IDEAS.

Voice quality pleasing and speech clear and distinct. Conducts meetings and speaks well before an audience. Adequate and appropriate vocabulary. Is logical and to the point. Able to exchange ideas with people of varied backgrounds.

X

C. MENTAL ALERTNESS.

Alert and responsive. Grasps essential points quickly. Understands new ideas.

X

D. CREATIVE ABILITY AND ORIGINALITY.

Has the ability to create original ideas and is prepared to substantiate.

X

E. ABILITY TO GET ALONG WITH OTHERS.

Displays the necessary leadership characteristics for the position. Holds an opinion or point of view with assurance and a spirit of cooperation without giving offense. Gains the cooperation of others. Reacts well under tension.

X

F. EMOTIONAL BALANCE AND MATURITY OF JUDGMENT.

Displays good judgment, emotional maturity and a sense of humor. Approaches questions with an open mind. Distinguishes between the important and unimportant. Capable of making a decision and coping with emergencies.

X

G. PROFESSIONAL ATTITUDE AND ETHICAL STANDARDS.

Shows professional integrity. Has an acceptable code of professional ethics. Handles confidential material appropriately.

X

SECTION II**GENERAL PERSONAL AND PROFESSIONAL FITNESS FOR THE POSITION.**

This rating is not necessarily the average of the items listed above. It is an overall summary as to the personal and professional fitness of the candidate's success.

X

COMMENTS (Use other side if needed): This candidate has demonstrated all of the above qualities to a high degree. This person has had major responsibilities in working with our advisory council and has been able to use skills in this area to create a feeling of cooperation between parents and the school.

Period of time the application was under my direction:
From **September 1976** to **February 1979**

My position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: /s/ SIDNEY C. HOSKINS

Date **November 30, 1981**

Exam
I.D. No.LOS ANGELES CITY UNIFIED SCHOOL DISTRICT
Personnel Division — Promotional Selection Office

--

(Office Use Only)

**NONCONFIDENTIAL REFERENCE FOR
EVALUATION OF TRAINING AND EXPERIENCE**

Quantity of Experiences		
Up to One Semester	Two to Five Semesters	Six or More Semesters

A. Professional Skills

1. Success and experiences as a classroom teacher	X
2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds	X
3. Participation in special programs (remedial, ESL, handicapped, etc.)	X
4. Involvement in innovative teaching practices	X
5. Skill in analysis and interpretation of testing programs	X
6. Evidence of proficiency in counseling and guidance	X
7. Participation in curriculum development	X
8. Skill in supervision of instruction	X
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)	X
10. Leadership in educational organizations, workshops, etc.	X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

A. Professional Skills

1. Success and experiences as a classroom teacher	X
2. Variety of experiences with students of differing socio-economic, ethnic, and cultural backgrounds	X
3. Participation in special programs (remedial, ESL, handicapped, etc.)	X
4. Involvement in innovative teaching practices	X
5. Skill in analysis and interpretation of testing programs	X
6. Evidence of proficiency in counseling and guidance	X
7. Participation in curriculum development	X
8. Skill in supervision of instruction	X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
9. Proficiency in related administrative responsibilities (department chairperson, coordinator, registrar, etc.)						X
10. Leadership in educational organizations, workshops, etc.						X

Remarks: This candidate had major responsibility as a classroom teacher and for one semester as opportunity room teacher. This person's major strength is the ability to develop self-discipline in children and to secure the assistance of parents in bringing about positive change in children. This candidate continually is improving service to the school through attendance at in-service and college classes.

	Quantity of Experiences		
	Up to One Semester	Two to Five Semesters	Six or More Semesters
B. Organization and Management Skills			
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.			X
2. Skill in delegating responsibility			X
3. Efficiency in management of supplies and equipment			X
4. Ability to budget and administer funds			X
5. Familiarity with modern office procedures			X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)			X
7. Skill in establishing and functioning within appropriate line-staff relationships			X
8. Ability to identify problems, assign and work within valid priorities			X

	Quality of Experiences					
	No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm
B. Organization and Management Skills						
1. Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.						X
2. Skill in delegating responsibility						X
3. Efficiency in management of supplies and equipment						X
4. Ability to budget and administer funds						X
5. Familiarity with modern office procedures						X
6. Initiative in arranging student activities (assemblies, contests, drives, etc.)						X
7. Skill in establishing and functioning within appropriate line-staff relationships						X

8. Ability to identify problems, assign and work within valid priorities

X

Remarks: This person can be called on to assist effectively when participation by student is requested in talent shows, programs, demonstrations, or other events. The creative ideas for presentations are drawn from the students and put together to make a most effective final product. This candidate continually demonstrated this ability in everything that was initiated in the classroom or in working with parents and staff.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X
X
X
X
X
X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

C. Human Relations

1. Ability to resolve conflicts and reduce tensions
2. Evidence of personal regard by students, parents, faculty
3. Sensitivity to factors which are related to student success in school
4. Sensitivity to the needs of the community and the ability to interpret them to the school
5. Evidence of building morale within the school
6. Evidence of interpreting the goals of the school to the community

X
X
X
X
X
X

Remarks: This person has the ability to recognize small problems and effectively deal with them before they mushroom out of proportion. There is great strength in helping parents to identify student needs and bring about needed change through cooperative efforts. This candidate uses active listening skills when working with others and has a most effective way of drawing out ideas from people.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

D. Communication Skills

- | | |
|---|---|
| 1. Ability to write bulletins, correspondence and reports | X |
| 2. Skill in communicating with students and parents | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

D. Communication Skills

- | | |
|---|---|
| 1. Ability to write bulletins, correspondence and reports | X |
| 2. Skill in communicating with students and parents | X |
| 3. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions | X |
| 4. Ability to exchange ideas with the faculty | X |

Remarks: This candidate has well developed techniques for clarity of expression whether working with a child, parent or other staff. This person is able to communicate ideas both verbally and in written form so that others receive a clear message.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

E. Community Participation

- | | |
|---|---|
| 1. Evidence of working with youth groups | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc. | X |
| 4. Use of community resources in the school program | X |

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

E. Community Participation

- | | |
|---|---|
| 1. Evidence of working with youth groups | X |
| 2. Participation in neighborhood associations and civic action groups | X |
| 3. Involvement in service groups, charity drives, etc. | X |
| 4. Use of community resources in the school program | X |

Remarks: This person has made a distinct contribution to the advisory council, senior citizens group, and P.T.A. through personal involvement in each group. This candidate has been a steady influence in all parent groups through attendance at every meeting and through active participation that produced results.

Quantity of Experience		
Up to One Semester	Two to Five Semesters	Six or More Semesters

F. Academic Preparation

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X
OVERALL PREDICTION OF SUCCESS	X

Quality of Experiences					
No Opportunity to Observe	Not Endorsed	Marginally Qualified	Endorsed	Endorsed with Confidence	Endorsed with Enthusiasm

F. Academic Preparation

1. Breadth and depth of training	X
2. Appropriateness of training	X
3. Recency of training	X
4. Professional growth	X

Remarks: This candidate is very capable in applying previous experience to current problems. This person brings to the job a varied background which gives a good reserve to draw on for logical solutions to problems.

SUMMARY OF EVALUATION: Please summarize your estimate of this candidate's probable success in *THIS* position based on candidate's training and experience. You are asked to compare this candidate *with all other candidates you have known*, and to reduce your personal loyalties to a minimum.

Remarks: This candidate has all the skills and abilities to become an outstanding assistant principal. This person is quick to understand the need for solutions to problems, work with others to make a plan, and then follow the plan through to the conclusion.

I feel the greatest attribute of this person is a well developed sense of appropriateness of response in any given situation. This candidate has great introspection and seeks ways to make the contributions more effective in working with students, parents and others.

This person's sincerity and enthusiasm for the job are most evident in the daily performance of duties. This candidate has a fine background of experiences to prepare for any school with any kind of staff.

This candidate gives so much of self in terms of helping students and other teachers that others feel challenged to do their best. This person is quick to

understand the essential points of a problem and see the solution through to the end.

This person will make a distinct and lasting contribution to any school where assignment may be made as an assistant principal.

Approximate time applicant was under your direction:
From **September 1976 to February 1979**

Your position during this period: **Principal**

Applicant's position during this period: **Teacher**

Location during this period: **Dominguez Elementary School**

Signature of Referent: /s/ SIDNEY C. HOSKINS

Present Position: **Principal**

Date **November 30, 1981**

SPOTLIGHT
Los Angeles Unified School District

March 19, 1984

24

**Report recommends changes in certificated
promotion policies**

Does the district's promotional process for certificated administrators result in the best possible person being selected for a particular assignment?

"Often, but not always" is among the several answers to that question, according to a comprehensive study of "Certificated Promotional Policies and Procedures" — the result of a recent research project conducted by Dr. Owen Knox, assistant superintendent, Personnel Division Reorganization.

The study was ordered by Superintendent of Schools Harry Handler in response to "stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates and do not provide equal access to all candidates."

Dr. Knox presented the report to the Board of Education's Personnel and Schools Committee earlier this month.

The study examined district promotion policies as far back as 1908, as well as numerous reports and studies from the 1960s and 1970s. Many of the recommendations in past records have been implemented in an effort to "increase the appropriateness of the examination process." Many others, according to Dr. Knox, have not.

Report Includes Interview Results

The report not only covers historical and present procedures from a factual viewpoint, but contains the results of

interviews with personnel directors of other large school districts in California and around the nation, Los Angeles city and county government and at least half a dozen major private corporations.

Also included are interviews with former and present Personnel Division directors and employees, Board of Education members and representatives of numerous local educational associations and organizations, universities and community organizations concerned with education.

The study asked about:

- objectives of the district's promotional policies and practices;
- the need for review, revisions and changes;
- fairness and equitability of the process for women and minorities;
- whether present policies actually result in the selection of the best candidate;
- quality vs. length of prior service;
- whether a "proper balance" exists between the assessment of the candidate's instructional expertise and managerial skill;
- assessment of a candidate's human relations skills; and
- strengths, weaknesses and improvements in the procedures as a whole.

Dr. Knox noted that while there was widespread agreement among those interviewed that the policies and procedures should be reviewed for possible change, it was harder to find concurrence in how the changes should take place.

While everyone believed the district should try to identify potential administrators as early as possible in their careers, not all agreed that the district has been "aggressively and actively" informing employees of available opportunities.

Thus, the report recommends new certificated employees be given written information about promotional opportunities not only when they are first hired, but — as a reminder — after they complete their probationary periods.

T&E Recommendations

On another issue: If the district requires of an administrative candidate certain levels of T&E (training and experience) to qualify for a promotional exam, then the district "should have the responsibility," Dr. Knox said, to assign candidates to the kinds of schools where the required experience can be obtained.

Potential administrators should be willing to accept "trade-offs" in order to fulfill the T&E requirements, he said.

For example, those whose experiences have been in inner city schools may need to accept the loss of a pay differential in order to gain familiarity with the operation of a suburban area school, while those in suburban assignments should be prepared to travel farther from home and take on the challenge of a more crowded school site or one that has many specially funded programs.

Every candidate, Dr. Knox emphasized, should have an equal chance of receiving assignments which will add up to the required administrative experiences by the time the candidate enters the promotional examination process.

He also suggested that the recommendations in the report be considered as a package, rather than on a piecemeal basis.

Organizations are invited to react to the report by writing Dr. Owen Knox, A-339, Central Administrative Offices.

The Personnel and Schools Committee is scheduled to hear oral reactions to the study on April 12, 1 p.m.

F-30

**REPORT OF A STUDY
OF
CERTIFICATED PROMOTIONAL POLICIES AND
PROCEDURES**

LOS ANGELES UNIFIED SCHOOL DISTRICT

MARCH, 1984

REPORT OF A STUDY OF CERTIFICATED PROMOTIONAL POLICIES AND PROCEDURES

PART I — INTRODUCTION

This report is the result of a study of the promotional policies and procedures for certificated personnel in the Los Angeles Unified School District. While this study had a focus on the promotional examinations for school-site administrative positions, its analyses, findings, and recommendations, with minor modifications, would apply to any administrative class.

There are five major parts to this report: I. Introduction — purpose of the study; II. Historical Development — a review of policy development and previous studies; III. Present Procedures — a description of the current promotional practices; IV. Data Collection and Analysis — a description of the methods of collecting information and a summary of findings; V. Recommended Promotional Procedures — a description of the recommended development and examination plan; VI. An Implementation Plan — recommendations for immediate and long-range implementation strategies. Budget implications and transition activities are provided.

Purpose of the Study

This study was designed to determine whether the procedures and policies for the selection of administrators in the Los Angeles Unified School District (LAUSD) should be changed or continued as they are utilized presently. The purposes of the study are:

1. To determine if the policies and procedures are perceived as appropriate in the selection of effective administrators for entry-level and middle-management positions in the District.

2. To determine if the policies and procedures provide equal access to administrative positions in the District for all candidates;

3. To determine what, if any, changes in the policies and procedures would increase the reliability and validity of the selection process while providing equal access to all candidates.

The Superintendent commissioned this study as a result of stated perceptions that current promotional procedures lack validity, do not select the best qualified candidates, and do not provide equal access to all candidates. In addition to collecting information regarding these perceptions, it was decided that there was a need to examine recommendations from previous studies, to review current research findings related to promotional practices and to analyze promotional practices of other institutions.

Proponents of using an assessment procedure as part of the evaluation process were numerous. Strengths enumerated were that assessment centers test job related skills, have validity, equity, and legal defensibility. Also mentioned were the training aspects of the process received by those evaluated. Some centers do not score assessments, but use them to counsel candidates.

The Examination Process. Most recommendations and comments about the current examination process related to: the prescribed number of candidates processed, using written exams, unverified T & E's (Brag Sheets), closed vs. open tracers, the subjectivity of promotional committees, the use of ranked lists, and reevaluations.

Number of Candidates. Many respondents criticized established examination procedures which require a prescribed number of candidates to be processed and interviewed. One representative said "The number going to

the orals presently includes candidates with no mathematical possibility of succeeding." Although numbers are important in complying with the consent decree, most respondents reported that adequate screening should decrease the number of unsuccessful candidates presently being processed.

Written Exam. Those interviewed who commented on written exams stated that written components should be required for all promotional exams. Other entities interviewed such as government, industry, and other school districts use and are advocates of written exams.

Representatives advocated the use of objective and essay exams oriented toward job related questions dealing with concrete, in-depth problem solving strategies. Supported by many were statements that knowledge of relevant facts, codes, and District rules needs to be assessed. It was recommended that an objective exam serve as a preliminary screening process thereby reducing the number of candidates who continue in the evaluation process with no chance of succeeding.

T & E's (Brag Sheets). Respondents indicated that writing of T & E's has become an art, professionally done, and an art unknown to applicants outside of the District. Under-scored was that the quality of presented experiences is not verified and there is no supportable evidence of why a particular score was given by the T & E Committee.

Suggestions given to evaluate training and experience were to change the present T & E format from a form to a written discussion of experiences and qualifications, require varied selected observed and evaluated experiences, and utilize simulation techniques.

Tracers (Responses from References). Respondents were not in agreement on using open or closed tracers. A

slight majority favored closed tracers indicating open tracers led to dishonesty and that closed tracers could eliminate friendship promotions.

Other comments regarding reference dealt with eliminating unsolicited tracers; reducing the time span of required references from supervisors from 5 years to 3 years; and requiring inservice training of referents in writing supportable references.

Promotional Committees. Criticism of promotional committees revolved around subjectivity and reliability. A typical response was, "We need people with knowledge and background to make decisions on candidates." Most often recommended was that the District use, as committee members, a pool of raters, preferably administrators, who have been trained through simulations and practices to evaluate T & E's, references, and oral interviews. The pool would have to be sufficiently large to allow a selection of a different team of raters for each exam which is balanced by sex and ethnicity.

Specific criticisms regarding oral interviews were that they appear to eliminate minorities, may be biased, are invalid, and allow good talkers, who may lack ability, to pass.

Scores. Respondents indicated that combining T & E and PQ scores to produce a ranked list did not show the differences in abilities of successful candidates. The ranking and closeness of scores indicate candidates do not differ in quality and there is the assumption that administrators have the same abilities or strengths. Suggested was an analysis of scores to determine clusters of ability and the establishment of a pool rather than a ranked list.

Reevaluations. The need to establish a probationary period for administrators during which assessments are made

was strongly emphasized. Performance appraisals have been utilized extensively in government and business and respondents indicated that an evaluation of performance on the job is important.

D. SUMMARY OF FINDINGS

To determine whether the current procedures and policies for the selection of administrators should be changed or continued, key representatives of districts, organizations, and groups were interviewed. Studies of promotional practices were also reviewed.

There was a consensus among respondents that policies and procedures should be changed to strengthen the validity and reliability of the examining procedure. There was agreement that a development program should be available to all candidates for the acquisition of required skills and that equal access to all experiences leading to promotions should be provided.

APPENDIX C
SOURCES OF DATA

CALIFORNIA SCHOOL DISTRICTS

Fresno School District

Joe Lee, Associate Superintendent

Susanne Pagni, Director of Certificated Personnel
Services

Long Beach Unified School District

Donald Ashely, Former Assistant Superintendent,
Personnel Services

Sacramento Unified School District

Henry T. Morita, Assistant Superintendent,
Personnel Services

San Diego County Assessment Center

Mary Lee Howe

Dianne Yerkes

San Diego Unified School District

George Russell, Assistant Superintendent, Personnel

San Francisco Unified School District

Stan Schainker

Bob Seymour, Program Manager Certificated
Personnel

LARGE SCHOOL DISTRICTS

Chicago School District

Nina Jones, Secretary to the Board of Examiners,
formerly Assistant Superintendent and Region
Superintendent

Dallas Unified School District

John J. Santillo, Assistant Superintendent, Personnel

New York

Ethel Fitzgerald, Chairman, Board of Examiners
Jerome Harris, Region Superintendent

Pittsburg School District

Robert Golligan, Executive Director of Personnel and
Employee Relations

PRESENT PERSONNEL DIVISION EMPLOYEES

Mr. Harry Nishisaka, Supervisor, Promotional Selection
Office

Dr. Richard Singleton, Personnel Research Supervisor,
Validation and Organizational Research Unit

Mrs. Irene Yamahara, Assistant Superintendent
Personnel Division, Operations

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

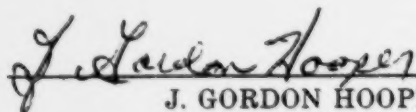
On October 20, 1989, I served the within Petition for Certiorari in re: "Shirley Loftis vs. Los Angeles Unified School District, et al." in the Supreme Court of the United States, October Term 1989 No. _____, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Richard K. Mason, Esq.*
Los Angeles Unified School District
450 North Grand Avenue
Room A-337
Los Angeles, California 90012
Counsel for Respondents
Counsel of Record

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 1989, at Los Angeles, California.

A handwritten signature in cursive script, reading "J. Gordon Hooper", is written over a horizontal line.

J. GORDON HOOPER

8

Supreme Court, U.S.
FILED
NOV 22 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-667

IN THE
Supreme Court of the United States

OCTOBER TERM, 1989

SHIRLEY LOFTIS,
Petitioner,
vs.
LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

RICHARD K. MASON
Counsel of Record
LOS ANGELES UNIFIED SCHOOL DISTRICT
Room A-215
450 North Grand Avenue
Los Angeles, California 90012
(213) 625-6601

Attorney for Respondents
Los Angeles Unified School District, et al.

QUESTIONS PRESENTED

1. Whether the findings of the Trial Court should be upheld as not "clearly erroneous"?

2. Whether the Trial Court's determinations with respect to individual liability, the dismissal of the named individuals, and the immunity defense are appropriate under the facts as found? Or, alternatively, whether the Court of Appeals' determination suffices to eliminate individual liability?

3. Whether the Lower Courts' determinations with respect to Petitioner's disparate treatment claims should be upheld as not "clearly erroneous" under the proper legal standards?

4. Whether the Lower Courts' determinations with respect to Petitioner's disparate impact claims should be upheld as not "clearly erroneous" under the proper legal standards?

5. Whether the Lower Courts' determinations with respect to Petitioner's age discrimination and pendent State claims should be upheld as not "clearly erroneous" under the proper legal standards?

PARTIES TO THE PROCEEDINGS

Respondents agree with Petitioner's listing of the parties to this proceeding.



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No. 89-667

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1989

SHIRLEY LOFTIS,
Petitioner,

vs.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, et al.,
Respondents.

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Respondents have few agreements with Petitioner's version of the facts. While there are occasions throughout her "Statement of the Case" where there is a reference to a pertinent document (*e.g.*, the decision of the Trial Court or the Court of Appeals), the represented version of the "facts" misrepresents the record, is outside the record, or mischaracterizes or misrepresents the decisions of the Trial Court and the Court of Appeals. In the few instances where it can legitimately be said a representation is drawn from the record, the source is nothing other than the testimony of Petitioner, her husband, or her expert witness: *i.e.*, her version of events. Unfortunately for Petitioner, neither the Trial Court nor the Court of Appeals accepted her version of events.

Admittedly, the whole record is not before this Court. But the Court is not a trial court, nor was the Court of Appeals. The pertinent factual determinations for the appeal are derived from the Opinion of the Trial Court. (Appendix A to the Petition) The findings of that Court form the basis for review and, under the law, will not be disturbed on appeal unless they are "clearly erroneous." *Anderson v. Bessemer City*, 470 U.S. 564, 84 L.Ed.2d 518, 105 S.Ct. 1504, 1512 (1985).

For purposes of this Opposition, Respondents will be generally content to register their strong opposition to Petitioner's representations, and to refer the Court to the Opinions of the Trial Court (Appendix A to Petition) and the Court of Appeals (Appendix C to Petition) for the factual context in which the appeal should be decided. Some specific instances where Respondents believe greater elaboration — drawn from the record — is appropriate will be identified below.

If this case is factually reviewed upon the findings of the Trial Court, the following assertions, among others, made by Petitioner simply cannot be sustained:

- The Respondent District's promotional selection system has "five pass/fail barriers," one of which is the "subjective recruitment-training barrier." (Petition, pp. 3, 5) This is merely Petitioner's point of view, not accepted by the Trial Court.
- "A white male was 4.5 times as likely as a white female to be an administrator," and other, similar assertions. (*Id.*, at pp. 4-5, 15) These are also mere assertions, not accepted by the Trial Court.
- "The subjective 'direct appointment' barrier caused disparate impact against white

females and females . . .” (*Id.*, at p. 7) This issue will be commented on more fully, below. This alleged “finding” was not made by the Trial Court, and the Court of Appeals erroneously concluded that Respondents failed to deal with the issue. (See Appendix C to Petition, at p. C6)

- With respect to her disparate treatment allegations, while Petitioner “established a prima facie case,” Respondents’ rebuttal was based on an “after the fact rationale” and was “based on a *comparison between Loftis and the ‘perfect’ or ‘ideal’ administrative applicant . . . ‘a perfect 10’ . . .*” (Petition, at pp. 11, 14, 20, emphasis in original) These new assertions are pure fiction and bear no relation to the Trial Court’s findings.
- The effect of the Respondents’ “informal affirmative action plan” is to “promote unlawfully black males at a rate that ranged from 7 to 43 times the rate for white females.” This, too, is merely Petitioner’s assertion, not the finding of the Trial Court.
- “Loftis established prima facie cases for ten different administrative positions between 1964-80.” (*Id.*, at p. 20) This “finding” does not appear in the Trial Court’s decision. More importantly, the question is not the prima facie case, but the entirety of the evidence and the Trial Court’s findings based thereon.

There are other distortions in Petitioner's version of the facts. What is being reviewed are the Trial Court's findings.

While the Trial Court determined that the "continuing violation doctrine" allowed it to "reach the merits of the matter" (Appendix A to Petition, at pp. A14-15), the effect of this is not entirely clear. Allegations of discriminatory conduct within the statute of limitations periods under the various laws were appropriately before the Court. These periods would certainly encompass times at Dominguez Elementary School after 1978, at least under certain limitations periods. The appropriate time frames would also certainly cover Petitioner's applications for the position of Assistant Principal in 1979 and 1981, which were indeed the focus of a significant part of the testimony in the trial.

If the Trial Court's determination was that the pre-statute of limitations allegations of disparate treatment were appropriately before the Court, Respondents respectfully disagree. However, the Trial Court's Memorandum Opinion, taken as a whole, clearly indicates that the Court found in favor of Respondents on *all* allegations of disparate treatment at *any* time. (See Appendix A to Petition, at pp. A19-23) The Court of Appeals agreed. (See Appendix C to Petition, at pp. C4-5)

For purposes of this appeal, those findings should be conclusive. Respondents do believe, however, that the only properly contested issues of fact and law are allegations of disparate treatment and disparate impact (regarding the examination process) within the limitations periods. See *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885, at 1889 (1977) and *Hazelwood School District v. United States*, 433 U.S. 299, 53 L.Ed.2d 768, 97 S.Ct. 2736, at 2742 (1977).

REASONS FOR DENYING THE WRIT

I.

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS HANDLER, GILBERT, AND LILLEY; IN THE ALTERNATIVE, THE COURT OF APPEALS' DETERMINATION SUFFICES TO ELIMINATE INDIVIDUAL LIABILITY.

Respondent Handler was the Superintendent of the District from 1980 through 1987. *The only factual allegation Petitioner made concerning him pertains to an alleged meeting in June of 1975.*

Respondent Lilley was a Field Specialist in the personnel office which served Petitioner and hundreds of other schools, from 1971-1980. His duties in that position related to the staffing of the schools under his jurisdiction and related personnel matters.

His contacts with and concerning Petitioner related to the period 1974-1976. Petitioner testified in her deposition (Vol. I, pp. 87-91) that she had no direct involvement with Respondent Lilley after October 1, 1976.

Respondent Gilbert is retired from the District. Mr. Gilbert was the "Deputy Area Administrator" for most of the time involved in the lawsuit, excepting the 1968-1970 period. He assisted the Area Superintendent in the supervision of the Area's schools. *His contacts with Petitioner took place from 1965 to 1968, and from 1974 to 1976.*

Respondent Gilbert was not involved in any way in the promotional selection process, nor did he ever evaluate or rate Petitioner as a promotional candidate.

Given the above facts, the Trial Court properly granted summary judgment in favor of these three defendants. They were clearly entitled to immunity (see Point II, below), even assuming involvement; and Petitioner's allegations were beyond any conceivable statute of limitations. *Harlow v. Fitzgerald* 457 U.S. 800, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1981); *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 52 L.Ed.2d 571, 97 S.Ct. 1885 (1977).

The Court of Appeals did not reach this issue, or the immunity one, below. (Appendix C to Petition, at p. 10) Since Respondents agree with the Court of Appeals on the disparate treatment issue, that basis for decision is certainly acceptable to them — even though the summary judgment and immunity decisions of the Trial Court are, in Respondents' opinion, unimpeachable.

II.

AS THE TRIAL COURT FOUND, ALL NAMED INDIVIDUAL DEFENDANTS ARE ENTITLED TO IMMUNITY FROM LIABILITY; OR, AGAIN, THE COURT OF APPEALS' ALTERNATIVE BASIS FOR DECISION SUFFICES TO ELIMINATE INDIVIDUAL LIABILITY.

Wood v. Strickland, 420 U.S. 308, 316-322; 43 L.Ed.2d 214, 222-225, 95 S.Ct. 992 (1975); and *Owen v. City of Independence, Missouri, et al.*, 445 U.S. 622, 657, 63 L.Ed.2d 673, 697, 100 S.Ct. 1398 (1980) compel this conclusion.

These cases clearly and definitively establish that the named individuals are entitled to immunity so long as their acts are in good faith, within the scope of their employment, and not done with intentional or reckless disregard of Petitioner's constitutional or other legal rights.

The immunity defense applies to individual respondents, justifying the summary judgment, the F.R.C.P. Rule 41(b) dismissal, and the judgment in favor of respondent Lingel at the close of all evidence.

All of the Respondents except Dr. Handler and Mr. Lilley testified at trial. Despite Petitioner's preoccupation with prima facie case determinations, the fact that the Trial Court found, after considering *all* the evidence at the end of the trial, that *all* named defendants acted in good faith, in accordance with all applicable rules, and did not intentionally otherwise discriminate or retaliate against Petitioner, justifies the ultimate judgment in favor of Respondents on the immunity defense. (Appendix A to Petition, at p. A24) *See also U.S. Postal Service v. Aikens*, 460 U.S. 711, 75 L.Ed.2d 403, 103 S.Ct. 1478 (1983) (regarding improper preoccupation with prima facie case, given the totality of the evidence).

III.

THE JUDGMENT SHOULD BE AFFIRMED ON THE DISPARATE TREATMENT CLAIMS.

The Trial Court's findings and conclusions are supported by the record and are not "clearly erroneous." In this case Respondent seems preoccupied with the question as to whether or not a *prima facie* case had been established. The proper analysis is to examine the record as a whole and the Trial Court's Memorandum Opinion in its entirety. See *U.S. Postal Service v. Aikens, supra*, where the Court said: "Because this case was fully tried on the merits, it is surprising to find the parties and the Court of Appeals still addressing the question whether Aikens made out a *prima facie* case. We think that by framing the issue in these terms, they have unnecessarily evaded the ultimate question of discrimination *vel non*." 103 S.Ct., at 1481.

Similarly, in this case there has been a trial on the merits. The Trial Court's Opinion must be viewed in its entirety, not by taking individual phrases out of context and substituting the part for the whole. Respondents submit that the Trial Court properly understood its role in this case, properly understood the burden of proof, and entered judgment against Petitioner on the merits based on the entire record before it.

The Trial Court clearly understood that, in Title VII cases (42 U.S.C. Section 2000(e) *et seq.*), a plaintiff must prove a *prima facie* case of actual disparate treatment, after which the employer must, if it is to prevail, merely articulate some legitimate, non-discriminatory reason for its actions. If that is done, the plaintiff then has the burden of proving that the claimed reason for

defense was merely a pretext. (See Appendix A to Petition, at pp. A16-19)

The employer does not have to prove the absence of a discriminatory motive, does not have to prove its defense by a preponderance of the evidence, and does not have to prove the persons selected were more qualified than Petitioner by objective evidence. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 67 L.Ed.2d 207, 101 S.Ct. 1089 (1981); *Board of Trustees v. Sweeney*, 439 U.S. 24, 58 L.Ed.2d 216, 99 S.Ct. 295 (1978); *Furnco Construction Co. v. Waters*, 438 U.S. 567, 57 L.Ed.2d 957, 98 S.Ct. 2943 (1978).

The burden of proof on the plaintiff to demonstrate intentional discrimination is equally as high, if not higher, in cases brought under 42 U.S.C., Sections 1981 and 1983. The same ultimate burden of proof to demonstrate intentional discrimination is required. Even if disproportionate impact exists, such does not establish a violation. Discriminatory purpose must be shown. Petitioner must prove discrimination on the basis of race, sex, or age. *Washington v. Davis*, 426 U.S. 229, 48 L.Ed.2d 597, 96 S.Ct. 2040 (1976); *General Building Contractors Association, Inc. v. Pennsylvania*, 458 U.S. 375, 73 L.Ed.2d 835, 102 S.Ct. 3141 (1982).

Moreover, to the extent Petitioner attempts to impose Section 1983 liability on the school district itself, she must prove that a policy, custom, ordinance, regulation, or decision officially adopted or promulgated deprived her of her constitutional or statutory rights. A local government is not liable under a theory of respondeat superior. *Monell v. Department of Social Services, City of New York, et al.*, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978).

That the Trial Court properly understood its role in the disparate treatment determination is evident from the

discussion at pp. 20-22 of its Memorandum Opinion. (Appendix A to Petition, pp. A20-22) The Court sets forth the burden of proof standards which are established by the Supreme Court cases cited above, particularly *Burdine* and *Aikens, supra*, after which the Court concluded: "After considering all of the relevant evidence, the Court finds that these named defendants . . . did not intentionally or otherwise discriminate or retaliate against Plaintiff . . . for any prohibited reason, including but not limited to her age, sex, or race." (*Id.*, at p. A24) The Court also concluded that: "No protected activity undertaken by plaintiff was the basis or reason for any of the acts or omissions of the defendants. There is no evidence of harassment or retaliation." (*Ibid.*)

As the Court of Appeals determined (Appendix C to Petition, at pp. C4-5), the Trial Court's findings must be affirmed as appropriate and not "clearly erroneous." It should be noted that the Trial Court was well aware that, after the Respondents have articulated a legitimate, nondiscriminatory reason for their actions, it is incumbent upon the Petitioner "to counter such evidence and offer proof as to pretext before resting." (Appendix A to Petition, at p. A22) Thus, the only fair reading of the Trial Court's Memorandum Opinion is, as the Court of Appeals determined (Appendix C to Petition, at p. C5), that the Trial Court found that, even if Petitioner proved a prima facie case, (1) Respondents had met their burden of proving legitimate nondiscriminatory reasons, (2) Petitioner had not proved intentional discrimination, and (3) Petitioner had not countered the Respondents' explanation by proof of pretext. The judgment on the disparate treatment claims should be affirmed.

IV.

THE JUDGMENT SHOULD BE AFFIRMED ON THE DISPARATE IMPACT CLAIMS.

A. The Trial Court Correctly Found That There Was No Adverse Impact In The Training And Experience Component Of The Examination Process. Petitioner's Assertions About A "Recruitment/Training Component" Are Without Merit.

In the first place, it must be emphasized that this action was brought by an individual only. It was not a class action. Petitioner exercised her right to opt out of a class action suit which had been brought by and on behalf of the class of women administrators, and potential administrators, within the District. *Szewiola v. Los Angeles Unified School District*, U.S. District Court, Central District of California, Case No. CV 80-03348 WMB, which resulted in a Consent Decree on behalf of the identified class. Said decree (Ex. 52) is still in effect. Additionally, Petitioner, despite all of the unsubstantiated rhetoric of her petition with respect to the "recruitment/training component" and the "application component" of the District's selection process, *did* apply for the position of Assistant Principal, Elementary, in 1979 and 1981. (The dispute regarding the 1977 application period is outside the statute of limitations.)

Under the record of this case, the *only* position Petitioner applied for and therefore the *only* challenge that Petitioner has standing to raise, relates to Assistant Principal, Elementary. Moreover, the *only* component of

the selection process that Petitioner failed, in both 1979 and 1981, is the Training and Experience portion of the selection process. Petitioner simply does not have standing to complain about alleged failures of others to apply, nor about any component of the selection process except the one *she* failed, the T&E portion. Thus, it was entirely appropriate for the lower courts to concentrate upon T&E portions of the exam process in their evaluation of the disparate impact claim. (The "direct appointment" process will be dealt with, below.)

With respect to disparate impact cases, there is a battle of statistics and experts as to what constitutes "adverse impact." Petitioner has the burden of proof to demonstrate "adverse impact" upon women, whites, and persons over forty, without which there is no disparate impact case. Petitioner must prove a substantial, *statistically significant*, adverse effect upon the protected class. *Castenada v. Partida* 430 U.S. 482, 51 L.Ed.2d 498, 97 S.Ct. 1272 (1977); *Connecticut v. Teal* 457 U.S. 440, 73 L.Ed.2d 130, 102 S.Ct. 2525 (1982)

To put this case in its proper context, Petitioner is a teacher. It has been a source of embarrassment to her that she has remained a teacher. (See Appendix A to Petition, at p. A27) She has applied for promotional positions in a civil service type promotional system, and has been unsuccessful in the Training and Experience portion, which compares her training and experience in relation to the hundreds of other candidates who have applied for the positions. What she describes as a "recruitment-training component" is nowhere identified as such in the findings of the Trial Court.

The reason Petitioner wishes to identify this as a "component" of the examination process is so that she can apply a *disparate impact* analysis to it. What she is identifying as a "barrier" and a "component" of the

selection process is the existential fact of being a teacher in the system. It is not a "process" or a "component" of the selection system in any intelligible sense.

Petitioner's motive in so mischaracterizing the facts and the Trial Court's findings (or is she not implying that the Trial Court agreed with her characterization?) is obvious: since her disparate impact case is virtually predicated on the utilization of the *elementary teacher population* as the proper group for comparison purposes, she must make every effort she can to tie in to that group as a defined *applicant group* for purposes of examining disparate impact.

But the elementary teachers of the District are not the proper group for this purpose, nor are they the "applicants" in the examination process. The qualified labor pool are those teachers who possess *administrative credentials*. The *applicants* are those who in fact possess these minimum qualifications and *actually apply*.

Despite Petitioner's obfuscation, there is really no mystery to determining the relevant labor force and the applicants for the examination process. *Treatment of a teacher is not part of the examination process*. The Trial Court understood the proper labor force for comparison purposes, as it time and again "found" that the "prima facie" statistics utilized by Petitioner were not proper for comparison purposes:

"This [Petitioner's Ex 422] , however, is not a true 'adverse impact' study because it is not based on the actual labor pool of qualified elementary teachers, those possessing administrative credentials." (Appendix A to Petition, at p. A27. See also p. A28)

The Trial Court clearly accepted Respondents' statistics and expert testimony regarding the application process (which starts with an application by one possessing minimum qualifications) and the qualified labor pool for comparison purposes:

"[Regarding adverse impact] This Court specifically finds that the conclusions [*i.e.*, no adverse impact] reached by defendants' witness Dr. David Friedland are true and correct under the facts of this case and the statistical evidence introduced, and hereby adopts and incorporates Dr. Friedland's conclusions, as set forth in Exhibit 158." (Appendix A to Petition, at p. A31)

A copy of Exhibit 158 is attached to this Opposition as Appendix A. The Court of Appeals, while concluding that there were other areas that needed to be addressed (but see below), upheld the finding of no adverse impact vis-a-vis the relevant labor pool, as it applied to whites and females (and further upheld the finding of job relatedness or business necessity of the Training and Experience examination). (Appendix C to Petition, at pp. C6-8)

These determinations are completely in accord with the facts and the law. The recent case of *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. ___, 109 S.Ct. 2115 (1989), drawing upon *Hazelwood, supra*, is completely dispositive on this point.

Without question, the ability of Petitioner to achieve prepromotional opportunities was, and is, an appropriate subject of analysis. It is, however, properly analyzed in a *disparate treatment* analysis, because Petitioner's assertions are that she was not given the same kinds of opportunities that males were or that minorities were. As indicated above, the lower court's determinations

totally refute these assertions. Petitioner cannot also analyze this series of allegations under a *disparate impact* process, because it is not susceptible of that analysis. There is no "recruitment-training component" of the examination process; it is not a part of an examination process that a person "fails." Nor is the "application process" an appropriate subject of scrutiny from this Petitioner. She was never "chilled" from applying. (*In fact, the Trial Court found that there was no chilling effect at all in the process. See Appendix A to Petition, at p. A25.*) She applied for all examinations for Elementary Assistant Principal within the statute of limitations, and was unsuccessful on the Training and Experience component of that process. That component is properly the focus of disparate impact analysis.

B. The "Issue" Of A Separate Disparate Impact Analysis For White Females Is A Non-Issue: Even If Such Is An Appropriate Analysis, The Record Demonstrates There Was No Adverse Impact Against White Females.

Petitioner and the Court of Appeals (See Appendix C to Petition, at pp. C6-7) fault the District for not providing a separate analysis of disparate impact with regard to white females, suggesting that if this had been done the result would have demonstrated adverse impact. This is simply not the case. As will be seen, Petitioner's own exhibit, showing white females as a separate group, proves that there was no disparate impact with respect to white females. If one is to believe the arguments put forth by Petitioner, white females are less successful in competing for promotions to Assistant Principal,

Elementary than are black females, black males, and white males. To illustrate this, Petitioner presented a statistical table on page 20 of her Opening Brief for her appeal to the Ninth Circuit. (A copy of this is provided in Appendix C to this Opposition.) Petitioner's analysis of the data presented in the table was based on the erroneous premise that the proper reference group for analysis of the number of candidates passing the examination and being promoted was the population of all elementary school teachers in Respondent District. This premise flies in the face of the Uniform Guidelines on Employee Selection Procedures, which were introduced as an exhibit and were the subject of expert testimony. The Uniform Guidelines indicate that the proper reference group for determination of disparate impact of employee selection procedures is the group of applicants for employment:

"The selection rates for males and females are compared alone; and the selection rates for the race and ethnic groups are compared with the selection rate of the race or ethnic group with the highest selection rate. There is no obligation to make comparisons for sub groups (*e.g.*, white male, white female, black male and black female)." (Question and Answer 11 to Uniform Guidelines, Exhibit 269 in the case.)

As the Trial Court found, in the case of Assistant Principal, Elementary, the population of all elementary teachers does not meet the test of being a qualified and available labor force. Not all elementary teachers are qualified, since not all teachers possess the administrative credential which is legally required for assignment to the class of Assistant Principal. In addition, only those teachers who apply to take the examination are "available." It was well established at trial that exami-

nations for Assistant Principal, Elementary are well publicized, and that any teacher meeting the minimal requirements is welcome to complete an application form, thereby becoming an applicant. The Trial Court found no evidence that any group of potential applicants was chilled from applying. As a result, it is reasonable to consider that the group of qualified applicants constitute the "qualified and available work force." The population of all elementary school teachers does not fit this definition, since most of that population are not qualified, in that they do not hold the required credential, and/or did not make themselves available by filing an application form, even though the scheduled examinations were well publicized.

Contrary to Petitioner's assertions, when her statistical table is properly analyzed, it is apparent that white women did better than did any other group. The following table illustrates this point. The table utilizes Petitioner's exhibit and shows the number of elementary teachers, the number applying, and the number being promoted as a result of five consecutive examinations for Assistant Principal, Elementary, between the years of 1972 and 1979. (See Appendix C herein)

Table 1: Applications and Promotions, Assistant Principal, Elementary School, 1972-1979

* Added by Respondents to Petitioner's compilation presented to the Court of Appeals (see p. 20, below).

Promo. Cycle Date	Nos. & Ratios	Fem. Wh.	Fem. Bl.	Fem. Other	Male Wh.	Male Bl.	Male Other
1972	Tchrs.	7,388	1,863	1,000	1,265	236	136
	No. Appl.	27	33	9	70	28	17
	Pct. Appl.	0.4	1.8	0.9	5.5	11.9	12.5
	No. Promo.	13	7	0	13	10	0
	* Pct. Promo.	48.1	21.2	0.0	18.6	35.7	0.0
1974	Tchrs.	7,099	2,158	1,624	1,213	231	247
	No. Appl.	39	56	18	69	43	25
	Pct. Appl.	0.5	2.6	1.1	5.7	18.6	10.1
	No. Promo.	4	11	0	7	5	0
	* Pct. Promo.	10.3	19.6	0.0	10.1	11.6	0.0

Promo. Cycle Date	Nos. & Ratios	Fem. Wh.	Fem. Bl.	Fem. Other	Male Wh.	Male Bl.	Male Other
1976	Tchrs.	6,979	2,077	1,482	1,271	241	226
	No. Appl.	66	127	28	89	57	19
	Pct. Appl.	0.9	6.1	1.9	7.0	23.7	8.4
	No. Promo.	9	11	0	16	7	0
	* Pct. Promo.	13.6	8.7	0.0	18.0	12.3	0.0
1977	Tchrs.	5,892	1,798	1,267	1,162	210	193
	No. Appl.	83	125	29	82	44	19
	Pct. Appl.	1.4	7.0	2.3	7.1	21.0	9.8
	No. Promo.	16	21	0	17	10	0
	* Pct. Promo.	19.3	16.8	0.0	20.7	22.7	0.0
1979	Tchrs.	6,433	2,081	1,648	1,183	240	250
	No. Appl.	126	125	36	59	34	16
	Pct. Appl.	2.0	6.0	2.2	5.0	14.2	6.4
	No. Promo.	33	16	0	10	3	0
	* Pct. Promo.	26.2	12.8	0.0	16.9	8.8	0.0

With one exception (the figures in italics), this table is precisely the same as Petitioner's exhibit, which the Court of Appeals (erroneously) "determined" showed a "prima facie case" of discrimination against white females. (Appendix C to Petition, at p. C7) The only problem with this conclusion is that it is wrong.

The italicized figures demonstrate that white women had a *higher* promotion rate than any other group, based on a proper application of the data. Contrary to Petitioner's method, which compared promotions to the *elementary teacher population*, the italicized line represents the proper comparison: *promotions as compared to applications*.

Examination of Table 1 shows that white women had the highest promotion rate of any group in the 1972 and 1979 examinations. In fact, the overall success rate of white women over the total of these five examinations shows that white females had the highest overall rate of success in being promoted of any group. If the total number of promotions for each group is divided by that group's total number of applications over the five examinations, the overall promotion rate for white females is the highest of any group. Over the five examinations, white females filed 341 applications, and received 75 promotions, for a promotion rate of 21.99 percent. Black females filed 466 applications and received 66 promotions, for a promotion rate of 14.16 percent. White males filed a total of 369 applications and received 63 promotions, for a promotion rate of 17.07 percent, and black males filed 206 applications and received 35 promotions, for a promotion rate of 18.22 percent. It is absurd, in the face of these statistics, to suggest that there is a "prima facie case" of adverse effect against white females, or that white females were "chilled" from applying. Petitioner's own evidence

proves, contrary to her assertions and the Court of Appeals' unsupported conclusion, that (1) there was not even a "prima facie" case, and (2) there was no adverse impact against white females.

**C. The Validity Of The T&E Process
Was Established.**

Respondents' expert, Dr. Friedland, testified as to the validity of the training and experience portion of the examination process. (See Exhibit 217A, Appendix B to this Opposition) As Dr. Friedland testified, he analyzed the T&E component for its job relatedness and concluded that the T&E process was valid and job related. This validation study was performed in accordance with the Uniform Guidelines promulgated by federal agencies.

The Trial Court accepted Dr. Friedland's testimony, adopted his report, and incorporated his conclusions into its Memorandum Opinion. (Appendix A to Petition, p. A38) The Court of Appeals upheld the Trial Court's findings and conclusions on this issue. (See Appendix C to Petition, at pp. C7-9) As this Court has stated: "when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." *Anderson, supra*, 105 S.Ct. at 1513. That is precisely what the Trial Court did in this case. Dr. Friedland's testimony was accepted by the Court, and the methodology that he used was in accordance with all appropriate guidelines and case law.

D. As The Trial Court Determined, There Was No Adverse Impact In The "Direct Appointment" Process; In Any Event, As That Court And The Court Of Appeals Determined, Petitioner's Failure To Obtain A "Direct Appointment" Was Justified By Nondiscriminatory, Job-Related Reasons.

The *only* evidence in the record demonstrating the *credentialed* population is Exhibit 419, which was introduced by Petitioner, but based on information provided by the Respondent District. (A copy of the pertinent page of this exhibit is attached hereto as Appendix D.) *This Exhibit demonstrates that the total female population of the District with administrative credentials was, as of 1984, the time of trial, 56.97%. If there is any relevant population group in the record, this would be it. The white female population with credentials is listed at 30.87%. Taking the figure 57% female credentialed population, an examination of the statistical evidence so highly relied upon by Petitioner in fact becomes a demonstration of nondiscrimination by the Respondent District.*

For example, evidence introduced by Petitioner (p. 4 of Ex. 377, a copy of which is attached as Appendix E) demonstrated that the promotions to Assistant Principal, Elementary in the period 1972 through 1980 were as follows: From the list, 55%; direct appointments 57%; total promotions 56%. *These percentages correspond almost exactly to the female credentialed population within the District. Thus, the most pertinent statistics and evidence in the record demonstrate no adverse effect with respect to regular or direct appointments, or the total appointment process, for the period 1972-1980.*

The Court of Appeals was of the opinion that Respondents had "failed to address this aspect of Loftis' allegations." (Appendix C to Petition, at p. C6) Yet the above evidence and argument were presented to both the Trial Court (which obviously accepted it) and the Court of Appeals. Respondents respectfully submit that the Court of Appeals' conclusion is not supportable.

Nevertheless, both the Trial Court and the Court of Appeals determined that there was a legitimate, nondiscriminatory basis for not giving Petitioner a "direct appointment." (See Appendix A to Petition, at p. A20-21; and Appendix C to Petition, at p. C8)

There was no adverse impact in the "direct appointment" process, and Petitioner was not denied such an appointment for an improper reason.

E. The Trial Court's Findings, With Which The Court Of Appeals Agreed, That There Was No Age Discrimination In The "Recency" Requirement Or Any Other Part Of The Process, Are Not "Clearly Erroneous."

As the Trial Court found:

"This Court specifically finds that there has been no statistically proven adverse impact against persons over 40 in the promotional selection process for Assistant Principal, Elementary, from 1972 to the present. (Exh. 220.)" (Appendix A to the Petition, at p. A32)

Additionally and importantly, the Trial Court also found that there had been "enormous changes" in the

District (*id.*, at p. A11), justifying not only Respondents' position on the importance of experience at a "Title I" school (which Petitioner refused), but also the "recency" requirement challenged by Petitioner:

"this [requirement] has been validated as a necessary employment practice. The district has changed considerably in the last 20 years and its requirements and programs have been correspondingly altered." (Appendix A to Petition, at p. A25)

The Court of Appeals upheld these findings and conclusions. (Appendix C to Petition, at p. C9)

V.

THE COURT OF APPEALS DID NOT ENGAGE IN ANY "FACTFINDING."

Petitioner asserts (Petition, at pp. 15-16) that the Court of Appeals violated principles enunciated in *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709; 89 L.Ed.2d 739, 106 S.Ct. 1527 (1986). Petitioner appears to misread *Icicle*. Even assuming a proper rule of law was misapplied to a finding, *Icicle* says the Court could have reversed, but does not require it.

If the proper rule of law properly applied to the findings leads to the same result, in the interests of judicial economy it makes little or no sense to reverse. Clearly, the Court of Appeals applied what it viewed as the proper rule of law to the findings and came to the same result as the Trial Court. (See Appendix C to Petition, at p. C8) *Icicle*, which concerned a misapplied notion of de novo review, is therefore distinguishable from the present case, where the Court of Appeals consistently applied the "clearly erroneous" standard.

VI.

**THE TRIAL COURT'S DETERMINATION
OF THE PENDENT STATE CLAIMS
SHOULD BE AFFIRMED.**

Petitioner does not seem to seriously contend that the Court's findings, conclusions, and judgment on these issues are not supported by the record. These findings (Appendix A to Petition, at 19, pp. 27-28) are more than supported by the record and themselves support the judgment. *Molien v. Kaiser Foundation Hospitals*, 27 C.3d 916, 167 Cal.Rptr. 831 (1980); *Cleary v. American Airlines*, 111 Cal.App.3d 443, 168 Cal.Rptr. 722 (1980).

CONCLUSION

Based on the foregoing, it is respectfully requested that the Writ be denied.

DATED: November 22, 1989

Respectfully submitted,

RICHARD K. MASON
Counsel of Record

LOS ANGELES UNIFIED
SCHOOL DISTRICT

Attorney for Respondents



APPENDIX A

APPENDIX A

-A 1-

EXHIBIT 158

**ANALYSIS OF ADVERSE IMPACT
FOR EXAMINATIONS FOR
ASSISTANT PRINCIPAL ELEMENTARY
FROM 1976 TO 1982**

FPA Friedland
Psychological
Associates, Inc.

**ANALYSIS OF ADVERSE IMPACT FOR
EXAMINATIONS FOR ASSISTANT
PRINCIPAL ELEMENTARY
FROM 1975-76 TO 1981-82**

Statistical results of four different examinations for Assistant Principal Elementary were analyzed to determine whether they showed evidence of adverse impact, as defined in the *Uniform Guidelines on Employee Selection Procedures*. These Guidelines are published by the federal agencies charged with enforcing the provisions of the Civil Rights Act of 1964 which deal with discrimination in employment, and have often been applied by the Courts in evaluating charges of employment discrimination on the basis of race, sex, or national origin.

Data Analyzed

All of the data presented and analyzed in Tables 1, 2, 3, and 4 of this report were taken from exhibit 360, which provides promotional selection statistics for the 1975-76, 1976-77, 1978-79, and 1981-82 examinations for Assistant Principal Elementary.

At the time that exhibit 360 was developed, the eligible list from the 1981-1982 examination for Assistant Principal Elementary was still active. As a result, a number of additional promotions have since been made from this list. Since counsel for the plaintiff have been provided with information on these additional appointments, Table 1a, which takes these additional appointments into account, has been included in this report as an update to Table 1.

The adverse impact analysis presented in this report is based upon the following information from Exhibit 360 and the additional information referred to above:

1. The total number of applicants, of all groups, who competed in each of the examinations, divided by sex.
2. The total number of Black and White applicants who competed in each examination, broken down alternately by race and by sex.
3. The number of male and female applicants, of all groups, who succeeded in passing the examination and were placed on the list of eligibles for promotion.
4. The number of Black and White applicants who were ultimately promoted to Assistant Principal Elementary from each examination. This information was broken down alternately by race and by sex.

Method of Analysis

The analysis procedures used in this investigation are consistent with the requirements of the *Uniform Guidelines on Employee Selection Procedures*, published in 1978. These Guidelines have been adopted by the federal agencies charged with enforcement of the non-discrimination provisions of the Civil Rights Act of 1964, and have often been applied by the Courts in employment discrimination litigation. This analysis is directed toward determining whether the difference between selection rates between two groups is so large that it is unlikely to be the result of chance.

To state this another way, if two groups tend to be equally successful in being selected, their rates of selection in any given examination should be similar. Due to chance, however, it is unlikely that their selection rates will be identical. In evaluating the difference in rates it is necessary to make a judgment concerning whether the difference in rates is large enough to suggest that the groups are being treated differently, or that the selection process is biased. Commonly accepted statistical decision rules used for this purpose are the five percent level of significance and the two to three standard deviation test which was applied in *Castaneda v. Partida* (430 U.S. 482), and *Hazelwood School District v. United States* (433 U.S. 299). Both of these tests were applied in the present analysis to provide the Court with the best possible data on which to evaluate the evidence presented in this report. Of these two tests, the five percent level of significance (based upon a Chi Square statistical test) was given the most weight, because it places a stricter standard on the defendant than does the two or three standard deviation test.

The formula used for the Chi Square analysis was taken from page 204 of Ferguson, G.A. *Statistical Analysis in Psychology and Education*. New York: McGraw Hill, 1966. The formula used for computation of the so-called "Standard Deviation Test" is based on the same formula as that applied in the case of *Castaneda v. Partida*, which is based on estimation of the standard error of a proportion using the binomial theorem. The formula used assumes sampling without replacement from a finite population. This formula was taken from the same Ferguson text, at page 144-146.

While Uniform Guidelines provide for application of a rule of thumb known as the Eighty Percent Rule as a first step in identifying adverse impact, the courts have

tended to prefer application of the more professionally acceptable five percent level or two to three standard deviation tests. This is because the Eighty Percent Rule often suggests the presence of adverse impact when the difference between selection rates is well within the expected range of chance differences (see *Contreras v. City of Los Angeles*, CA 9 {1981} aff'd 656 F 2d. 1267; cert den 455 US 1021 {1982}).

Definition of Adverse Impact

Subsequent to the publication of the *Uniform Guidelines on Employee Selection Procedures* on August 22, 1978, the five federal agencies which authored and adopted the Guidelines published on March 2, 1979 a set of 90 *Questions and Answers on the Uniform Guidelines on Employee Selection Procedures*. These were shortly followed by publication of an additional three questions and answers, bringing the total of questions and answers to 93. The purpose of these, as stated by the agencies was to "... clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures."

The Questions and Answers make it clear that adverse impact is to be determined by comparison of selection rates of groups in question. Selection rates are computed by dividing the number of persons selected from a group by the number of applicants from the group. Question and Answer 17 indicates that males are to be compared with females, and race and ethnic groups with race and ethnic groups. There is no obligation to compare subgroups, such as white females with black males, etc.

Results of Analysis

In the appendix of this report are statistical tables examining the outcome of four examinations for Assistant Principal Elementary held between 1975 and 1982. The Eighty Percent Rule, a Chi Square test of statistical significance, and a standard deviation test (based upon sampling without replacement from a finite population) were applied to the results of each of these examinations. The focus of these analyses was the difference between males and females and between whites and blacks. Results can be summarized as follows:

1. Male vs. Female analysis

- a. The results of the 1978-79 examination showed evidence of adverse impact against males with respect to passing the T&E evaluation and reaching the eligible list. In this examination males reached the eligible list at a rate less than 80 percent that for females, and this difference was statistically significant by both the Chi Square and the Standard Deviation tests.
- b. None of the other examinations evaluated showed significant disparities between men and women.

2. Whites v. Blacks

- a. In the 1978-79 examination, blacks had a significantly lower rate of promotion than did whites, constituting adverse impact as defined by the Uniform Guidelines. The rate of promotion for blacks was less than 80 percent that of

whites, and this difference was statistically significant by both the Chi Square Test and the Standard Deviation Test.

- b. None of the other five examinations showed a significant disparity between blacks and whites.

APPENDIX

Statistical Tables Evaluating Adverse Impact of

Examinations for

Assistant Principal Elementary

Assistant Principal Elementary 1981-82

Assistant Principal Elementary 1978-79

Assistant Principal Elementary 1976-77

Assistant Principal Elementary 1975-76

Table 1: Assistant Principal Elementary 1981-82

A. Comparison of Males and Females with respect to reaching the eligible list.							
	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	108	320					
No. reaching eligible list	24	56					
Pct. reaching eligible list	22.2	17.5	No	1.18	No	1.09	No

Table 1: Assistant Principal Elementary 1981-82

B. Comparison of promotion rates for males v. females using statistics for Black and White applicants only.

(Blacks and Whites only)	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	87	262					
No. being promoted	6	26					
Pct. being promoted	6.9	9.9	Yes*	.72	No	.85	No

* If there were one more male passing in Table B or one more black passing in Table C, there would be no violation of the 80 percent rule (see Contreras v. Los Angeles, 656 F 2d. at 1273, Note 4).

Table 1: Assistant Principal Elementary 1981-82

C. Comparison of promotion rates for Whites v. Blacks.

(Blacks and Whites only)	White	Black	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	194	155					
No. being promoted	20	12					
Pct. being promoted	10.3	7.7	Yes* Black	.68	No	.82	No

* If there were one more male passing in Table B or one more black passing in Table C, there would be no violation of the 80 percent rule (see Contreras v. Los Angeles, 656 F 2d. at 1273, Note 4).

 Revised to reflect updated information concerning appointments.
 See Tables B and C, below.

Table 1a: Assistant Principal Elementary 1981-82

A. Comparison of Males and Females with respect to reaching the eligible list.

	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	108	320					A 12.
No. reaching eligible list	24	56					
Pct. reaching eligible list	22.2	17.5	No	1.18	No	1.09	No

Table 1a: Assistant Principal Elementary 1981-82

B. Comparison of promotion rates for males v. females using statistics for Black and White applicants only.

(Blacks and Whites only)	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	87	262					
No. being promoted	19	43					
Pct. being promoted	21.8	16.8	Yes* Female	1.28	No	1.13	No

* If there were one less male passing or two more females passing in Table B, there would be no violation of the 80 percent rule (see Contreras v. Los Angeles, 656 F 2d. at 1273, Note 4).

Table 1a: Assistant Principal Elementary 1981-82

C. Comparison of promotion rates for Whites v. Blacks.

(Blacks and Whites only)	White	Black	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	194	155					
No. being promoted	38	25					
Pct. being promoted	19.6	16.1	No	.70	No	.83	No

Table 2: Assistant Principal Elementary 1978-79 (July 2, 1979)

A. Comparison of Males and Females with respect to reaching the eligible list.

	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	109	289					
No. reaching eligible list	14	66					
Pct. reaching eligible list	12.8	22.8	Yes Male	4.92	Yes	2.22	Yes Male

Table 2: Assistant Principal Elementary 1978-79 (July 2, 1979)

B. Comparison of promotion rates for males v. females using statistics for Black and White applicants only.

(Blacks and Whites only)	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	92	252					
No. being promoted	13	48					
Pct. being promoted	14.1	19.0	Yes*	1.12	No	1.06	No

* If there were one more male passing in Table B, there would be no violation of the 80 percent rule (see Contreras v. Los Angeles, 656 F 2d. at 1273, Note 4).

Table 2: Assistant Principal Elementary 1978-79 (July 2, 1979)

C. Comparison of promotion rates for Whites v. Blacks.

(Blacks and Whites only)	White	Black	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	183	161					
No. being promoted	41	20					
Pct. being promoted	22.4	12.4	Yes Black	5.85	Yes	2.42	Yes Black

Table 3: Assistant Principal Elementary 1976-77

A. Comparison of Males and Females with respect to reaching the eligible list.

	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	144	238					
No. reaching eligible list	37	55					
Pct. reaching eligible list	25.7	23.1	No	.33	No	.57	No

Table 3: Assistant Principal Elementary 1976-77

B. Comparison of promotion rates for males v. females using statistics for Black and White applicants only.

(Blacks and Whites only)	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	123	212					
No. being promoted	30	43					
Pct. being promoted	24.4	20.3	No	.77	No	.88	No

Table 3: Assistant Principal Elementary 1976-77

C. Comparison of promotion rates for Whites v. Blacks.

(Blacks and Whites only)	White	Black	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	166	169					
No. being promoted	39	34					
Pct. being promoted	23.5	20.1	No	.56	No	.75	No

Table 4: Assistant Principal Elementary 1975-76

A. Comparison of Males and Females with respect to reaching the eligible list.							
	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	168	218					
No. reaching eligible list	25	25					
Pct. reaching eligible list	14.9	11.5	Yes* Female	.98	No	.99	No

* If there were one less male or one more female passing in Table A there would be no violation of the 80 percent rule (see Contreras v. Los Angeles, 656 F 2d. at 1273, Note 4).

Table 4: Assistant Principal Elementary 1975-76

B. Comparison of promotion rates for males v. females using statistics for Black and White applicants only.

(Blacks and Whites only)	Male	Female	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	150	190					
No. being promoted	23	20					
Pct. being promoted	15.3	10.5	Yes Female	1.75	No	1.32	No

Table 4: Assistant Principal Elementary 1975-76

C. Comparison of promotion rates for Whites v. Blacks.

(Blacks and Whites only)	White	Black	80% Rule	Chi Square	Stat. Signif	Standard Dev. Test	Adverse Impact
Total No. of Applicants	157	183					
No. being promoted	25	18					
Pct. being promoted	15.9	9.8	Yes Black	2.83	No	1.68	No



APPENDIX B



- B 1 -

EXHIBIT 217

**EVALUATION OF THE JOB
RELATEDNESS OF TRAINING AND
EXPERIENCE RATING FACTORS FOR
ASSISTANT PRINCIPAL ELEMENTARY
FOR THE
LOS ANGELES UNIFIED SCHOOL DISTRICT**

FPA Friedland
Psychological
Associates, Inc.

Assistant Principal Elementary

September 10, 1984

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APPENDICES

- APPENDIX A: Task List for Asst. Principal Elementary
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- APPENDIX C: Rating Scales and Procedures
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with List of T&E Factors

[APPENDICES TO REPORT NOT INCLUDED
IN THIS OPPOSITION BRIEF]

**Evaluation of the Job Relatedness of
Training and Experience Rating factors for
Assistant Principal Elementary
Los Angeles Unified School District**

The present investigation was designed to evaluate the job relatedness of the factors used in the Training and Experience evaluation segment of the promotional examination for Assistant Principal Elementary. The rating factors used on the Training and Experience (T&E) rating form are the same as those used for Principal Elementary.

In order to evaluate the job relatedness of the rating factors, an investigation was conducted in which subject matter experts (SMEs) were asked to: 1) Rate each of the training and experience rating factors with respect to its degree of importance, and the degree to which the factor differentiates superior from average candidates for Assistant Principal; and 2) Indicate the duties of the job for which each factor is essential.

RATIONALE FOR THE INVESTIGATION

In any analysis of job relatedness it is necessary to take steps to ensure data gathered are meaningful and objective. Since the present investigation was conducted after the examination had been developed and placed in use, it was felt that safeguards were needed to ensure objectivity on the part of the SMEs concerning the job relatedness of the T&E process. In order to accomplish these safeguards, the following steps were taken:

1. A previously-conducted job analysis was used to avoid the possibility that knowledge of the lawsuit on the part of SMEs might lead to of bias in the job analysis results. The job analysis chosen for use

was conducted in 1980 and 1981 by research staff of the Los Angeles Unified School District. This job analysis was a comprehensive one, involving virtually all Principals and Assistant Principals in the District as SMEs. Job analysis questionnaires were sent to all incumbent Principals and Assistant Principals, with 75 percent of the questionnaires being returned for analysis.

2. The procedures used in the present study to evaluate the job relatedness of rating factors on the T&E form were designed to ensure that each SME provided individual input independent of other SMEs. Consensus among SMEs was evaluated to determine the job relatedness of the T&E factors. The means by which this was accomplished is described below.

PROCEDURES

Job Analysis

The job analysis data used in the present investigation were taken from the 1980-81 study mentioned above, which was conducted by research staff of the Los Angeles Unified School District. This job analysis was a very extensive one involving a comprehensive list of tasks covering Principal and Assistant Principal jobs in elementary, junior high, and high school positions. Job analysis questionnaires were distributed to all Assistant Principals and Principals in all elementary, junior high, and high schools in the District. Questionnaires were filled out and returned by 61 Assistant Principals Elementary.

The task list used in the present analysis consisted of all tasks having an average rating of three or higher on a five-point scale based upon ratings of the 61 Assistant

Principals Elementary who completed job analysis questionnaires in the 1980-81 study. The scale used in rating the tasks in the job analysis included a range from one to five, with one being "not critical"; two, "slightly critical"; three, "moderately critical"; four, "critical"; and five, "very critical". The tasks for Assistant Principal Elementary were grouped into 20 duties, each of which encompassed from 2 to 15 related tasks. By including only those tasks with an average of three or higher, tasks which were related as less than "moderately critical were excluded.

Subject Matter Experts

The subject matter experts (SMEs) used in the present investigation of the T&E process for Assistant Principal Elementary included 24 individuals. Fifteen of these were Assistant Principals, while nine were Principals. The group included 12 males and 12 females. Of these there were 9 white, 6 black, 5 hispanic, and 4 Asian.

T&E Rating Factors

The T&E rating factors to be evaluated were taken from form 4108-3, dated May, 1978. The 36 rating factors listed on this form were used for both Assistant Principal Elementary and Principal Elementary examinations. The factors were grouped into six categories as follows:

1. Professional Skills
2. Organization and Management Skills
3. Human Relations
4. Communication Skills

5. Community Participation

6. Academic Preparation

Rating and Duty Linkage Procedures

The 24 SMEs were gathered together for a meeting on May 2, 1984 to evaluate the job relatedness of the T&E process for Assistant Principal Elementary. They were not told in advance of the purpose of the meeting, except in very broad terms. At the meeting, the SMEs were told that the purpose of the meeting was for them to evaluate the job relatedness of the rating factors used in the T&E process for Assistant Principal Elementary, and that they were to accomplish this by means of a set of rating procedures. The SMEs worked individually in accomplishing their ratings and were supervised at all times by Dr. David Friedland, of Friedland Psychological Associates, Inc. They were asked to perform their analysis through the following steps:

1. *Review of tasks, duties, and rating factors:* The SMEs were asked to thoroughly read the list of tasks obtained from the 1980-81 job analysis study (see Appendix A). The purpose of this step was to familiarize them with the specific tasks listed. They were told that each of the duties under which tasks were grouped was to be thought of as being defined by the tasks listed for that duty. For example, duty number two, dealing with developing budgets and regulating expenditures of funds, was to be thought of as including only those tasks actually performed by Assistant Principals Elementary. Thus, the duty of developing budgets and regulating expenditures of funds was defined by only three tasks: 1) studying budget guidelines to determine funds available; 2) directing needs assessment proce-

dures with staff, parents and community, including establishment of appropriate budget committee; and 3) determining priorities for expenditure of funds based upon needs assessment. In contrast, this duty for Principal Elementary included eleven tasks, since Principals have greater budget responsibility than do Assistant Principals.

Thus, SMEs were instructed to consider each duty statement as being defined by those tasks included in it. The SMEs were not asked to rate or evaluate the importance of the tasks, since this had already been done in the 1980-81 job analysis study.

2. *Rating of the T&E Factors to Determine Importance and Appropriateness as Ranking Criteria (see Appendix C):*
 - a. *Rating on Scale A — Importance:* The SMEs were asked to rate the 36 T&E rating factors with respect to their importance for performance of the job of Assistant Principal Elementary. These ratings were done on a 5-point scale. The points on the scale were defined as follows: 1) of little or no importance; 2) Helpful, but not critical; 3) important, must possess to some degree; 4) critical, must possess or serious problems will result; and 5) essential, cannot be successful without this factor. In analysis of the ratings provided by the SMEs in this step, a rating factor was considered important if it had an average rating of three or higher on this scale.
 - b. *Rating on scale B — Distinguishing Superior Performers:* Each of the T&E rating factors was rated by the SMEs with respect to the

degree to which it differentiates more effective performers from less effective ones on a 5-point scale. Points on the scale were defined as follows: 1) not important; 2) does not distinguish beyond a minimal level; 3) better employees usually possess greater proficiency in this factor; 4) employees possessing higher levels of this factor usually perform at an outstanding level; and 5; outstanding employees almost always possess high levels of this factor.

This rating is relevant to the question of whether a given factor is useful for ranking candidates for promotion. Rating factors used to rank individuals for promotion should measure characteristics which differentiate more effective from less effective employees.

3. *Duty Linkage Procedures (see Appendix C):* Duty linkage was a key step in determining whether each T&E factor was job related. The procedure followed by the SMEs in this step was a simple one. They were asked to list for each of the 36 T&E factors up to five duties from the duty list for which the factor provides essential preparation. It was emphasized that they were only to choose those duties for which the factor is centrally important. The SMEs were allowed to choose from zero to five duties for each T&E factor, and to list them in priority order from the most directly related to the least directly related. In this step, as in all steps of the present investigation, the SMEs worked independently, with no discussion among themselves.

RESULTS OF THE JOB RELATEDNESS INVESTIGATION

The results of the SME ratings were analyzed to determine the degree of job relatedness of the T&E rating procedures. Table 1, below shows the results of analysis of the ratings on scales A and B, concerning importance and differentiation of more effective performers.

Table 1: Mean importance and superior performer ratings for T&E factors for Assistant Principal Elementary.

	F A C T O R S	M E A N R A T I N G S	
		Importance	Distinguish Superior
1.	Success and experience as a classroom teacher.	4.17	4.17
2.	Variety of experience with students of differing socioeconomic, ethnic, and cultural backgrounds.	4.13	3.71
3.	Participation in special programs (remedial, ESL, handicapped, etc.)	2.83	2.79
4.	Involvement in innovative teaching practices.	3.38	3.67
5.	Skill in analysis and interpretation of testing programs.	3.67	3.54
6.	Evidence of proficiency in counseling and guidance.	4.00	3.92
7.	Participation in curriculum development.	4.00	3.96
8.	Skill in supervision of instruction.	4.46	4.42
9.	Proficiency in related administrative responsibilities (department chairman, coordinator, registrar, etc.)	3.46	3.42
10.	Leadership in educational organizations, workshops, etc.	2.79	2.96
11.	Effectiveness in preparing and organizing schedules, reports, staff assignments, etc.	3.96	3.63

MEAN RATINGS
Importance Distinguish
Superior

FACTORS

12. Skill in delegating responsibilities.	4.17	4.04
13. Efficiency in management of supplies and equipment.	3.46	3.21
14. Ability to budget and administer funds.	3.96	3.58
15. Familiarity with modern office procedures.	3.42	3.25
16. Initiative in arranging student activities (assemblies, contests, drives, etc.)	3.21	3.08
17. Skill in establishing and functioning within appropriate line-staff relationships.	4.21	4.04
18. Ability to identify problems, assign and work within valid priorities.	4.42	4.46
19. Ability to resolve conflicts and reduce tensions.	4.67	4.71
20. Evidence of personal regard by students, parents, faculty.	3.96	4.08
21. Sensitivity to factors which are related to student success in school.	4.58	4.54
22. Sensitivity to the needs of the community and the ability to interpret them to the school.	4.46	4.50
23. Evidence of building morale within the school.	4.25	4.42
24. Evidence of interpreting the goals of the school to the community.	4.08	4.04

MEAN RATINGS

	Importance	Distinguish Superior
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FACTORS

25. Ability to write bulletins, correspondence, reports.
26. Skill in communicating with students and parents.
27. Effectiveness in speaking before large groups, conducting meetings, and participating in group discussions.
28. Ability to exchange ideas with the faculty.
29. Evidence of working with youth groups.
30. Participation in neighborhood associations and civic action groups.
31. Involvement in service groups, charity drives, etc.
32. Use of community resources in the school program.
33. Breadth and depth of training.
34. Appropriateness of training.
35. Recency of training.
36. Professional growth.

3.96	3.83
4.71	4.42
4.13	4.04
4.63	4.58
2.88	2.71
2.29	2.29
2.21	2.25
2.96	3.04
3.96	3.67
4.00	3.83
3.42	3.25
3.71	3.63

It can be seen in Table 1, that 31 of the 36 T&E factors had average importance ratings of 3 or greater. Factors 3, 10, 29, 30, and 31 had average importance ratings less than 3. It can also be seen from this table that factors 3, 29, 30, and 31 had average ratings less than 3 on the superior performer rating. While the ratings for factors 3, 10, and 29 have averages less than 3, they are highly rated enough to suggest a moderate level of importance. The average ratings for factors 30, and 31, however, are considerably lower. In reviewing the content of these two factors, it can be seen that they deal with involvement with activities which do not directly relate to school work.

The above results suggest that 31 of the 36 T&E factors are clearly important to success as an Assistant Principal Elementary, and three (numbers 3, 10, and 29) are of substantial, though somewhat lesser importance. Two of the factors (numbers 30 and 31) are of questionable importance. The ratings on the criterion of differentiating superior performers suggest that all factors except 3, 29, 30, and 31 are appropriate for use in ranking candidates for Assistant Principal Elementary.

Analysis of Linkage of Factors With Duties

It was assumed in analyzing the results of this step in the investigation that if a given T&E factor was job related, the SMEs would tend to agree with one another in choosing the duties which require that factor for their performance. To the extent that a T&E factor is not job related, the SMEs should either fail to find any duties which require the factor or disagree with respect to which duties require the factor. In the case of Assistant Principal Elementary, since there were 20 duties listed, any given duty would have one chance in four of being chosen at random by an SME selecting five duties at random.

The Binomial Theorem was used in analyzing the results of the linkage ratings. It was determined that if there were truly no relationship between the T&E factors and the duties of the job, there was a statistical probability of less than one in one thousand that 13 or more of the 24 SMEs would link a given duty with a given T&E factor. This analysis assumes that if a T&E factor is not job related, the SMEs would be able only to link it with particular duties on a random basis. The most commonly used level of statistical significance in validity analysis is the five percent level. The standard used in the present analysis was the one tenth of one percent level, which is considerably more conservative.

The SMEs were asked to evaluate all factors for linkage except for factors 33 through 36. These latter factors deal with broad issues such as breadth, appropriateness, and recency of education, and professional growth. Such factors are not amenable to application of the linkage procedure, so their job relatedness must be evaluated by their importance ratings. The results of analysis showed that all factors met the standard of agreement of 13 or more of the 24 SMEs. Only factor 29, evidence of having worked with youth groups, failed to be linked to any duty by at least 13 of the SMEs.

CONCLUSIONS

As a result of the above analysis, it is concluded that the factors used in the T&E process for Assistant Principal Elementary are job related, as evidenced by a high level of agreement among SMEs independently evaluating the relationship between the factors and the duties of Assistant Principal Elementary.

- B 15 -

In addition, the results demonstrate that the factors address qualities important to successful performance, and which are appropriate for use in ranking individuals for selection.

END

[APPENDICES TO REPORT NOT INCLUDED
IN THIS OPPOSITION BRIEF]



APPENDIX C

ALFONSO

APPLICATIONS AND PROMOTIONS, ASSISTANT PRINCIPAL, ELEMENTARY SCHOOL ("APES"), 1972-1979

From Petitioner's Brief Before The Court Of Appeals (p. 20)
(Drawn From Various Exhibits)

Promo. Cycle Date	Nos. & Ratios	Fem. Wh.	Fem. Bl.	Fem. Other	Male Wh.	Male Bl.	Male Other	Minor. Stud. %
6/19/72	Tchrs.: Appl.: Ratio: Promoted: Ratio:	7,388 27 274 13 568	1,863 33 56 7 266	1,000 9 111 Unknown —	1,265 70 18 13 97	236 28 8 10 24	136 17 8 Unknown —	54
5/13/74	Tchrs.: Appl.: Ratio: Promoted: Ratio:	7,099 39 182 4 1,775	2,158 56 39 11 196	1,624 18 90 Unknown —	1,213 69 18 7 173	231 43 5 5 46	247 25 10 Unknown —	58

Promo. Cycle Date	Nos. & Ratios	Fem. Wh.	Fem. Bl.	Fem. Other	Male Wh.	Male Bl.	Male Other	Minor. Stud. %
6/7/76	Tchrs.: Appl.: Ratio: Promoted: Ratio:	6,979 66 102 9 775	2,077 127 16 11 189	1,482 28 53 Unknown —	1,271 89 14 16 79	241 57 4 7 34	226 19 12 Unknown —	63
6/20/77	Tchrs.: Appl.: Ratio: Promoted: Ratio:	5,892 83 70 16 368	1,798 125 14 21 86	1,267 29 44 Unknown —	1,162 82 14 17 68	210 44 5 10 21	193 19 10 Unknown —	66
7/2/79	Tchrs.: Appl.: Ratio: Promoted: Ratio:	6,433 126 51 33 195	2,081 125 17 16 130	1,648 36 46 Unknown —	1,183 59 20 10 118	240 34 7 3 80	250 16 16 Unknown —	73

APPENDIX D

LAUSD ADMINISTRATIVE CREDENTIALS AND POSITIONS
EXHIBIT 419, p. 1

	CREDENTIALS, ADMINISTRATIVE		POSITIONS ACTUALLY HELD: ELEM. ASSIST. PRINCIPAL, 1980	
	#	%	#	%
MALE WHITE	1,354	29.54	29	23.57
FEMALE WHITE	1,415	30.87	29	23.57
SUBTOTAL	2,769	60.42	58	47.15
MALE BLACK	273	5.96	12	9.75
FEMALE BLACK	730	15.93	25	20.32
SUBTOTAL	1,003	21.88	37	30.08
MALE 'OTHER'	345	7.52	13	10.56
FEMALE 'OTHER'	466	10.17	15	12.19
SUBTOTAL	811	17.70	28	22.76
TOTAL MALE	1,972	43.03	54	43.88
TOTAL FEMALE	2,611	56.97	69	56.08
GRAND TOTAL	4,583	100.00	123	99.96

'OTHER' = HISPANIC, ASIAN, PACIFIC ISLANDER, AMERICAN INDIAN



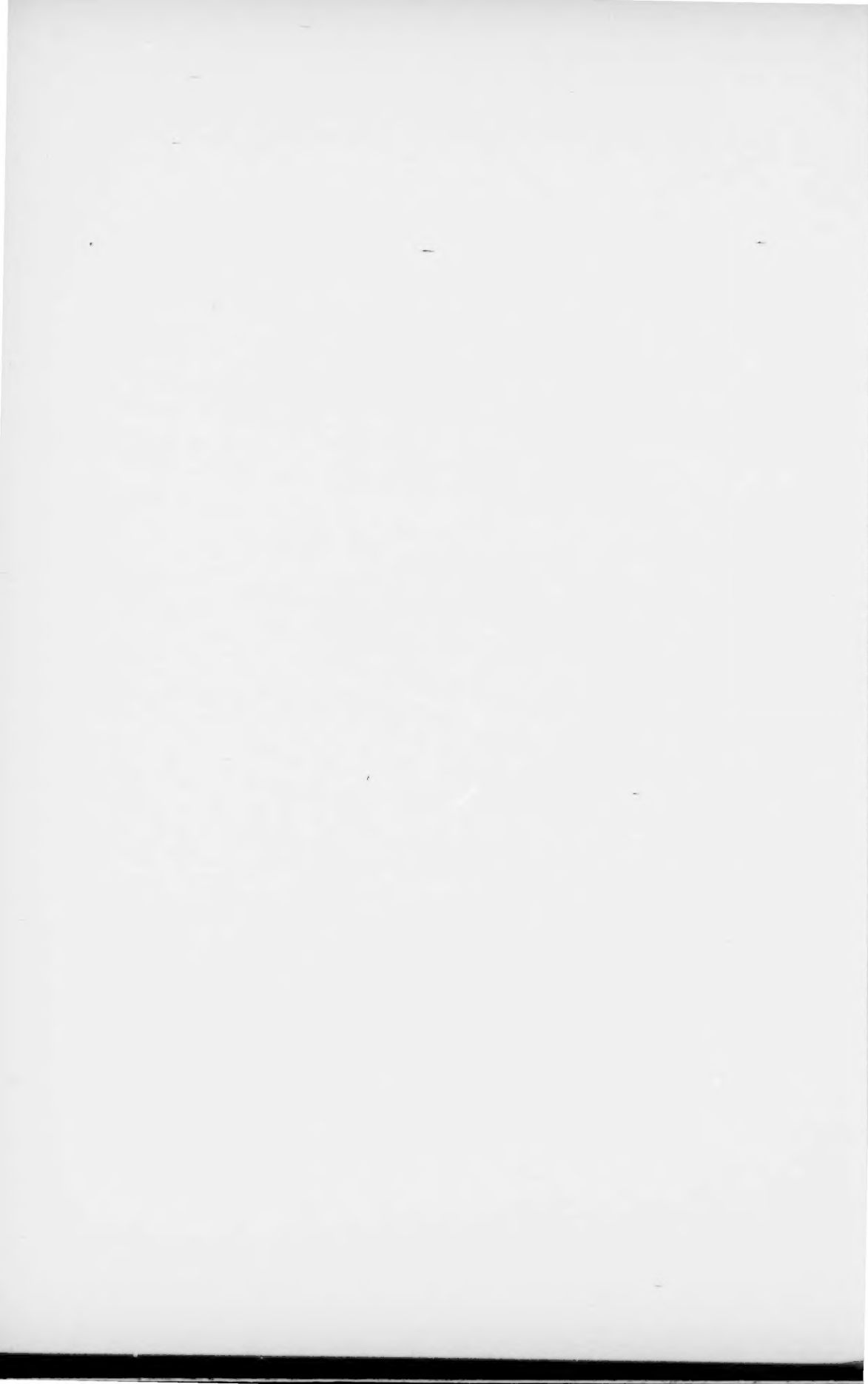
APPENDIX E

APPENDIX E

ADVERSE IMPACT OF ADMINISTRATIVE EXAMINATIONS 1972 — PRESENT
EXHIBIT 377, p. 4

CLASS	APPLICANTS		ASSIGNMENTS		SELECTION RATE (%)		NON-LIST APPOINTMENTS	
	M	F	M	F	M	F	M	F
D.A.A./Area Coord.	181	47	18	5	10.0	10.6	5	
Asst. Princ., Adlt. Ed	139	69	25	12	18.0	17.4		1
Elem. Princ.	379	220	126	81	33.2	36.8	44	28
Sec. Princ.	276	126	45	15	16.3	11.9(n.s.)	9	2
Asst. Princ., Elem.	671	928	103	127	15.4	13.7(n.s.)	29	38
Asst. Princ., Second.	678	473	61	63	9.0	13.3	11	24
Princ., Adlt., Ed.	83	12	9	0	10.8	0.0(n.s.)	1	
TOTAL	2407	1875	387	303	16.1	16.2	99	93

n.s. — no statistically significant difference in selection rates.



No.
IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1989

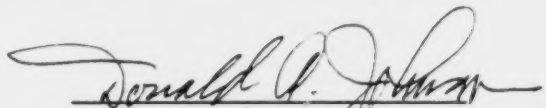
SHIRLEY LOFTIS,
Petitioner,
vs.
LOS ANGELES UNIFIED SCHOOL DISTRICT, et al.,
Respondents.

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Donald A. Johnson, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business address is 3550 Wilshire Boulevard, Suite 916, Los Angeles, California 90010. On this date, I served the within BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

SPENCER E. COVERT
PARKER AND COVERT
Suite 312
1901 East Fourth Street
Santa Ana, CA 92705

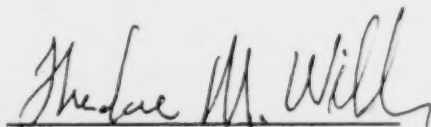
That affiant makes this service, for RICHARD K. MASON, Counsel of Record, LOS ANGELES UNIFIED SCHOOL DISTRICT, Attorney for Respondents herein, and that to the best of my knowledge all the persons required to be served in said action have been served.


Donald A. Johnson

On November 22, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Donald A. Johnson, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Witness my hand and official seal.




Notary Public in and for
said county and state